

RECOMMENDATIONS

Enacting Clause, Short Title, and Organization

(1) The House bill and Senate amendment have different titles and different organization systems.

HR

(2) The House bill includes this technical language as part of its structure to keep section 604 as current law. The Senate amendment replaces the entire existing law.

HR/LC

Title I, Part A

(3) There are no significant differences between the House bill and Senate amendment.

HR/LC

(4) The House bill and Senate amendment have different sections and headings in Part A and Part D. In Part D the Senate amendment has a subpart IV that is not in the House bill.

LC

(5) There are no significant differences between House (c)(1) and Senate (c)(1).

LC

(6) The Senate amendment goes into greater detail on how the needs of special education students were not being met prior to PL 94-142.

HR

(7) The House bill does not include the Senate findings on implementation or providing services.

HR

(8) There are no significant differences between the House bill and Senate amendment.

LC

(9) The House bill does not include these Senate findings.

HR

(10) There are no significant differences between the House bill and Senate amendment.

LC

(11) There are no significant differences between the House and Senate amendments.

LC

(12) There are minor wording differences between the House bill and the Senate amendment regarding full participation of minority individuals.

SR

(13) The House bill does not include this Senate finding.

HR

(14) The House bill refers to “system improvement activities” while the Senate bill refers to “systemic-change activities.”

SR

(15) The Senate amendment, but not the House bill, includes a clarification that certain medical devices are not required to be provided under the Act.

HR

(16) There are no significant differences between the House bill and Senate amendment.

LC

(17) The Senate amendment, but not the House bill, adds this new definition.

HR

(18) There are no differences between the House bill and Senate amendment.

LC

(19) The Senate amendment, not the House bill, has greater detail in citing ESEA programs. There are also minor wording differences between the bills in describing the impact of State or local funds.

HR

(20) The House bill and Senate amendment are largely similar except the House bill includes language designed to place a limitation on the extent of the services provided under the Act. The Senate amendment does not include this provision.

HR

(21) The House bill applies the requirements for a highly qualified teacher in NCLB to special education teachers. The Senate amendment mirrors the NCLB definition of a highly qualified teacher, with these exceptions:

1. Requires all special education teachers to be certified as special education teachers.
2. Exempts teachers who only provide consultative services from demonstrating subject knowledge/competency.
3. Requires middle/high school teachers, who primarily teach children with significant cognitive disabilities to demonstrate knowledge of elementary curriculum rather than high level competition in each of the subjects they teach.

HR with an amendment to read as follows:

“(10) HIGHLY QUALIFIED.—

(A) IN GENERAL.—For any special education teacher, the term "highlyn qualified" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

- (i) includes the requirements described in subparagraph (B); and**
- (ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).**

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

- (i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;**
- (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and**
- (iii) the teacher holds at least a bachelor's degree.**

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS.—When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of such Act, such term means the teacher, whether new or not new to the profession, may either—

- (i) meet the applicable requirements of section 9101 of such Act for any**

elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirement of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS.— When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may—

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the additional core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform state standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA.— A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.”

Report language:

“The Conference Committee intends to clarify that, for the purposes of the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Education Act, a special education teacher who provides only consultative services to a highly qualified teacher (as such term is defined in section 9101 (23) of the Elementary and Secondary Education Act of 1965) should be considered a highly qualified special education teacher if such teacher meets the requirements of section 602(10)(A) of this legislation. Such consultative services do not include instruction in core academic subjects, but may include adjustments to the learning environment, modifications of instructional methods, adaptation of curricula, the use of positive behavioral supports and interventions, or the use of appropriate accommodations to meet the needs of individual children.”

Report language:

“Under the Elementary and Secondary Education Act of 1965, each state was charged with developing a “high, objective, uniform state standard of evaluation” (HOUSSE) to provide teachers with another avenue through which to demonstrate the subject mastery requirements of the “highly qualified” definition. Some states have developed HOUSSE standards for special education teachers. With the passage of this legislation, the Conference committee intends to clarify that under the Elementary and Secondary Education Act of 1965, states may allow special education teachers to utilize a HOUSSE which applies to all teachers or adapt a HOUSSE to accommodate special education teachers, including a HOUSSE that consists of a single evaluation to cover multiple subjects. Such adaptations or accommodations must not, however, establish a lesser standard for the content knowledge requirements of special education teachers compared to the standards for general education teachers. The Conference committee encourages all states to explore these options.”

Report language:

“It is the conferees’ intent that any new special education teacher teaching one core academic subject shall demonstrate competency by passing a rigorous State academic subject test in that subject, or successful completion in that subject of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing. Any special education teacher who is not new to the profession and who teaches one core academic subject must, by the end of the 2005-2006 school year, pass a rigorous State academic subject test in that subject, complete in that subject an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing, or complete a high objective uniform State standard of evaluation.”

Report language:

“The bill requires special education teachers to have obtained full State certification as special education teachers, but it does not prevent general education and other teachers who are highly qualified in particular subjects from providing instruction in core academic subjects to children with disabilities in those subjects. For example, a reading specialist who is highly qualified in reading instruction, but who is not certified as a special education teacher, would not be prohibited by this provision from providing reading instruction to children with disabilities.”

Report Language:

“In special cases where such children also receive instruction in one or more core academic subjects at an instructional level above the basic elementary school curriculum , the Conferees fully intend for such instruction to be provided by a highly qualified teacher demonstrating a high level of competency in each of the core academic subjects taught. Such instruction could be provided by a highly qualified teacher in the general education classroom or by such teacher providing instruction in a self-contained classroom. Such competency shall be demonstrated consistent with the requirements of this section and with those of section 9101 of the Elementary and Secondary Education Act of 1965.”

(22) There are no significant differences between the House bill and the Senate amendment.

LC

(23) The Senate amendment, but not the House bill, adds this new definition.

HR

(24) There are no significant differences between the House bill and the Senate amendment.

LC

(25) There are no significant differences between the House bill and the Senate amendment. Both the House bill and the Senate amendment include this definition of outlying area.

LC

(26) The Senate amendment, but not the House bill, includes extensive language regarding the different types of people that can be deemed a parent of a child with a disability.

SR with an amendment to read as follows:

“(22) PARENT –The term “parent” means—

- (i) a natural, adoptive or foster parent of a child (unless prohibited by State law);**
- (ii) a guardian (but not the State if the child is a ward of the State)**
- (iii) an individual acting in the place of a natural or adoptive parents, including a grandparent, stepparent or other relative with whom the child lives or an individual who is legally responsible for child’s welfare; or**
- (iv) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.”**

(27) The House bill and Senate amendment are largely similar except the Senate amendment includes an exception regarding certain medical devices and the Senate amendment includes interpreting services, school health services, and travel training instruction as listed related services. The Senate amendment, but not the House bill, includes an exception for medical devices that are surgically implemented or its replacement.

HR with an amendment:

Strike “school health services” and insert “school nurse services designed to enable the child to receive FAPE as described in the IEP” and strike “travel training instruction,”

Report language:

“The Conferees intend that ‘orientation and mobility services’ include travel training instruction.”

(28) There are no significant differences between the House bill and the Senate amendment.

LC

(29) There are no differences between the House bill and the Senate amendment.

LC

(30) There are no significant differences between the House bill and the Senate amendment.

LC

(31) The House bill focuses on ‘academic and developmental achievement’ and the Senate amendment focuses on ‘academic and functional achievement.’

HR

(32) The Senate amendment, but not the House bill, includes these definitions for military children, homeless children, and wards of the State.

SR with an amendment to read as follows:

“(34) HOMELESS CHILDREN.--The term ‘homeless children’ has the meaning given the term ‘homeless children and youths’ in section 725 of the McKinney-Vento Homeless Assistance Act.

(35) WARD OF THE STATE.—

(A)The term ‘ward of the State’ means a child who, as defined by the State where the child resides, is a foster child, a ward of the State or is in the custody of a public child welfare agency; and

(B) Notwithstanding subparagraph (A), the term does not include a foster child who has a foster parent covered by the definition of “parent” in section 602 (22).”

(33) There are no differences between the House bill and the Senate amendment.

LC

(34) Neither the House bill nor Senate amendment make changes to current law.

HR

(35) The House bill includes this technical language as part of its structure to keep section 604 as current law. The Senate amendment replaces the entire existing law.

LC

(36) There are no differences between the House bill and the Senate amendment.

LC

(37) The House bill, but not the Senate amendment, provides examples of jobs in which recipients of funds should try to employ people with disabilities.

HR

(38) There are minor wording differences between the House bill and the Senate amendment.

HR

(39) The House bill requires a public comment period of 60 days while the Senate amendment limits the comment period to 90 days.

SR with an amendment:

Strike “60” and insert “75”

(40) There are minor wording differences between the House bill and the Senate amendment, but the content is the same.

HR

(41) The House and Senate have the same language, but the Senate amendment places this in (f) (see note 43).

HR

(42) The House bill and Senate amendment are similar with minor wording differences, except that the Senate amendment and not the House bill includes a provision that any letters are provided as guidance and are not legally binding.

HR

(43) The House and Senate have similar language, but the House bill places this in (e) (see note 41).

HR

(44) The House bill includes this technical language as part of its structure to keep parts of current law. The Senate amendment replaces the entire existing law.

LC

(45) The House bill and Senate amendment contain similar provisions regarding State support and facilitation of regulations. But the House bill, not the Senate amendment, requires States to minimize the number of regulations under the Act while the Senate amendment, not the House bill, requires States to identify in writing any rule, regulation, or policy that is generated by the State, not the Act or its regulations.

HR with an amendment:

Insert paragraph (2) of House bill

(46) The Senate amendment allows up to 15 States to participate in a paperwork reduction pilot. The House bill allows the participation of up to 10 States in note 263.

HR

(47) The House bill contains a request for GAO to report on the paperwork burden of the Act every 2 years, with an initial 2 year deadline.

HR

(48) The House bill also includes requests for GAO to report on disability definitions in the States, distance learning for professional development programs, and the impact of the Act on limited English proficient students. The Senate amendment does not include these reports.

HR

(49a) The Senate amendment, but not the House bill, specifies that the Freely Associated States shall continue to be eligible for competitive grants administered by the Secretary.

HR

Part B

(49) The House bill includes this technical language as part of its structure to keep parts of current law. The Senate amendment replaces the entire existing law.

LC

(50) There are no differences between the House bill and the Senate amendment.

LC

(51) The House bill places a cap on the maximum grant that is based on the number of students in the State. The Senate amendment bases the formula for the maximum total cap on the number children with disabilities in the 02-03 school year and adjusts the formula by the change in the population and poverty rates in the State.

SR with an amendment:

Rewrite (a)(2) to read as follows:

“(2) Maximum amounts.-- The maximum amount of the grant a State may receive under this section for any fiscal year is --

(A) for fiscal years 2005 and 2006 is—

(i) the number of children with disabilities in the State who are receiving special

education and related services—

- (I) aged 3 through 5 if the State is eligible for a grant under section 619; and
- (II) aged 6 through 21; multiplied by--
- (ii) 40 percent of the APPE in public elementary and secondary schools in the United States; and
- (B) for fiscal year 2007 and subsequent fiscal years—
 - (i) the number of children with disabilities in the 2004-2005 school year in the State who received special education and related services--
 - (I) aged 3 through 5 if the State is eligible for a grant under section 619; and
 - (II) aged 6 through 21; multiplied by—
 - (ii) 40 percent of the APPE in public elementary and secondary schools in the United States; adjusted by;
 - (iii) the rate of annual change in the sum of--
 - (I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and
 - (II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III)."

(52) The Senate amendment includes the Freely Associated States as eligible entities under this Act. The House bill does not.

HR

(53) There are no differences between the House bill and Senate amendment.

LC

(54) The Senate amendment allows funds to be allocated to the Freely Associated States and for studies and evaluations under Part B. The FAS's are not eligible entities under the House bill, and the House bill allocates funds for studies and evaluations in Part D.

HR with amendment:

Insert:

“(i) Technical Assistance.

(A) In General. The Secretary may reserve not more than $\frac{1}{2}$ of 1 percent of the amounts appropriated under this Part for each fiscal year to provide technical assistance activities authorized under section 616.

(B) Maximum amount. The maximum amount the Secretary may reserve under (A) for any fiscal year is \$25,000,000, increased by the cumulative rate of inflation since fiscal year 2004.”

(55) The House bill and Senate amendment have different language to recalculate the 1999 base amount if a State that served 3-5 year olds in that year does not serve them in a subsequent year.

HR

(56) There are minor technical differences between the House and Senate amendments, but the content is the same.

HR

(57) There are minor technical and wording differences between the House and Senate amendments, but the content is the same.

HR

(58) There are no differences between the House bill and Senate amendment.

HR/LC

(59) There are minor technical and wording differences between the House and Senate amendments, but the content is the same.

HR/LC

(60) The House bill limits the amount of funds for State-level activities to 25% of its FY 97 State grant, adjusted by inflation or the percent increase of the Federal appropriation, and allows these funds to be used without regard to commingling or supplantation requirements. The Senate amendment allows States in FY 04 and 05 to reserve 10% off their State grant for State-level activities, after reserving funds for administration. After FY 05, this figure is then increased by the inflation rate. Small States are allowed to reserve 12% until FY 05, and then adjust that level by inflation (see note (62)). Both House and Senate allow commingling. See note (66).

HR

(61) The House bill allows States to use up to 20% of its State set-aside for administration, or \$750,000. The Senate amendment allows States to use their FY 03 level for administration, or \$800,000, adjusted for inflation each year.

The Senate amendment, but not the House bill, also requires States to certify that they meet the requirements of designating financial responsibilities for services.

SR with an amendment to read as follows:

“(1) STATE ADMINISTRATION.—

(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004 or \$800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than 5 percent of

the amount the outlying area receives under subsection (b) for the fiscal year or \$35,000, whichever is greater.

(B) CUMULATIVE ANNUAL ADJUSTMENTS.—For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust (i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004, and (ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

(D) CERTIFICATION- Prior to expenditure of funds under this paragraph, the State shall provide assurances to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12(A) are current.”

(62) The Senate amendment allows States in FY 04 and 05 to reserve 10% off their State grant for State-level activities, after reserving funds for administration. After FY 05, this figure is then increased by the inflation rate. Small States are allowed to reserve 12% until FY 05, and then adjust that level by inflation. The House bill limits the amount of funds for State-level activities to 25% of its FY 97 State grant, adjusted by inflation or the percent increase of the Federal appropriation, and allows these funds to be used without regard to commingling or supplantation requirements. See note (66).

SR with an amendment to read as follows:

“(2) OTHER STATE-LEVEL ACTIVITIES.—

(A) STATE-LEVEL ACTIVITIES—

(i) IN GENERAL.—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State’s allocation under subsection (d) for fiscal year 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (adjusted by the cumulative rate of inflation since fiscal year 2006 as measured by the percentage increase, if any in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(ii) SMALL STATE ADJUSTMENT—Notwithstanding clause (i), in the case of a state for which the maximum amount reserved for State administration is not greater than \$850,000 the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State’s allocation under subsection (d) for fiscal year 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (adjusted by the cumulative rate of inflation since fiscal year 2006 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).”

(63) The Senate amendment establishes a list of required activities that States must support with their State-level funds to support. The House bill has no similar requirement.

SR with an amendment to read as follows:

“(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

- (i) For monitoring, enforcement and complaint investigation.**
- (ii) To establish and implement the mediation, processes required by section 615(e)(1), including providing for the costs of mediators, support personnel.”**

(64) The Senate amendment establishes a list of authorized activities that States may conduct with State-level funds. The House bill includes Senate activities (i), (ii), (vii), and (viii) in note 67 and adds monitoring and complaint investigation, mediation and voluntary binding arbitration, support to meet State goals in 612(a)(15), prereferral services, and subgrants to LEAs designated as in need of improvement due to the scores of students with disabilities. Activities (iii)-(vi), (ix), and (x) in the Senate amendment are not included in the House bill.

SR with an amendment to read as follows:

“(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

- (i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.**
- (ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.**
- (iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.**
- (iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.**
- (v) To support the use of technology, including universally designed technology and assistive technology devices, to maximize accessibility to the general curriculum for children with disabilities.**
- (vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.**
- (vii) To assist local educational agencies in meeting personnel shortages.**
- (viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.**
- (ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.**
- (x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.**

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services, to students with disabilities, in schools or local educational agencies identified as being in need of improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the basis, in whole, of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, that teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet the goals in section 1111.”

(65) The House bill allows States to reserve up to 40% of its state-level funds to establish a fund for high cost special education services. The Senate requires States to reserve 2% of their State grant (after reserving funds for administration) to establish a LEA risk pool and distribute those funds to LEAs. The Senate requires the State to pay 75% of the costs that exceed 4 times the national APPE for every student in each LEA that applies. This amount is ratably reduced if there are not sufficient funds. The Senate amendment requires LEA applications to ensure that the State funds do not supplant State medicaid payments for appropriate services. The Senate amendment also allows pre-existing State programs to override the required elements established in the Senate amendment.

HR with an amendment to read as follows:

“(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies, and consortia of local educational agencies) in addressing the needs of high-need children, each State shall reserve for each fiscal year 10 percent from the amount of the State’s reservation for state-level activities under paragraph (2)(A), to—

- (i) establish a high-cost fund, but only during the initial fiscal year of the fund;**
- (ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph; and**
- (iii) support innovative and effective ways of cost-sharing by the State, by a local educational agency, or among a consortia of local educational agencies, as determined by the State in coordination with representatives from local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies).**

(B) LIMITATION ON USES OF FUNDS. –

- (i) The funds used pursuant to subparagraph (A)(i) to establish a high-cost fund shall not exceed five percent of the reservation in the initial fiscal year of the fund.**
- (ii) The funds used pursuant to subparagraph (A)(iii) to support the innovative and effective ways of cost-sharing among a consortia of local educational agencies shall be not more than five percent of the reservation.**

(C) STATE PLAN FOR HIGH-COST FUND. –

- (i) The State educational agency shall establish a plan, including the State’s definition of a “high need” child with a disability, which is developed in consultation with local educational agencies (including charter schools that**

are local educational agencies, and consortia of local educational agencies) within 90 days of the reservation of funds under this subsection.

(ii) Such plan shall –

- (I) Establish, in coordination with representatives from local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies), the definition of a “high need” child with a disability that, at a minimum,—
 - (aa) addresses the financial impact the specific “high need” child with a disability has on that child’s local educational agency budget, and
 - (bb) ensures that the cost of any such “high need” child with a disability is greater than three times the average per pupil expenditure (as defined in ESEA) in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate;
- (II) Establish eligibility criteria for the participation of local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) that, at a minimum, takes into account the number and percentage of “high need” children with disabilities in a local educational agency;
- (III) Develop a funding mechanism that provides distributions each fiscal year to eligible local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) that meet the criteria developed by the State under subclause (II); and
- (IV) Establish an annual schedule by which the State educational agency shall make its distributions from the fund each fiscal year.

(iii) The State shall make its final plan publicly available at least 30 days prior to the beginning of the school year, including dissemination of such information on the State website.

(D) DISBURSEMENTS FROM THE HIGH-COST FUND.—

- (i) **IN GENERAL---**Each State educational agency shall make all annual disbursements from the fund established under subparagraph (A)(i) in accordance with the plan published pursuant to subparagraph (C).
- (ii) **USE OF DISBURSEMENTS.** Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its plan under (C)(ii).
- (iii) **APPROPRIATE COSTS.** The costs associated with educating a high need child under clause (ii) are only those costs associated with providing direct special education and related services to such child that are identified in such child’s IEP.

(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of such child to ensure a free appropriate public education for such child.

(F) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

- (i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

(G) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

(H) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.—Notwithstanding the provisions of subparagraphs (A) through (G), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost-sharing and reimbursement program of high-need, low-incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were created not later than January 1, 2004 and are currently in operation, provided such program meets the minimum definition of a “high need” child with a disability in subparagraph (C)(2)(I).

(I) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).”

(66) The Senate amendment allows State-level funds to be used without regard to commingling or supplantation requirements. See note (60), which includes identical language from the House bill.

HR with an amendment:

Strike “, and (3)” and insert “and” before (2) in paragraph (4)

(67) The House bill establishes a list of authorized activities that States may conduct with State-level funds. The Senate amendment only includes House activities (A), (D), (F), and (H) in note 64 and adds positive behavioral supports and mental health services, use of technology, transition programs, alternative programming for expelled students, and support for appropriate accommodations and alternate assessments.

HR

(68) The House bill, but not the Senate amendment, requires States to use any increase in State-level funds that exceeds the rate of inflation to be used to provide subgrants to LEAs designated as in need of improvement due to the scores of students with disabilities to improve results for students with disabilities in those LEAs.

HR

(69) There are minor wording differences between the House and Senate amendments, and the House bill includes a requirement that the report include information on the percentage of funds distributed by formula to LEAs.

HR

(70) The Senate amendment allows States to use State-level funds under Part B and the 619 program to support a State policy to allow children to remain in Part C instead of moving to the 619 program until kindergarten. The House bill does not include this provision.

HR

(71) There are minor wording differences between the House and Senate amendments, but the content is the same.

LC

(72) There are minor wording differences between the House and Senate amendments. Note: the reference to subsection (e) in (2) of the House bill should be a reference to subsection (d).

LC

(73) There are no differences between the House bill and Senate amendment.

LC

(74) The House bill places a cap on the amount of funds for State-level activities to the FY 03 level, except that the amount may increase by the rate of inflation for the purpose of making subgrants to LEAs designated as in need of improvement due to the assessment scores of students with disabilities.

HR with an amendment:

Add the following language to section 611(e) as paragraph (5):

“(5) SPECIAL RULE FOR INCREASED FUNDS- The State may use funds it reserves as a result of inflationary increases under section 611 (e)(1)(B) to carry out activities authorized by sections 611(e)(2)(C)(i), (iii), (vii), and (viii).”

(75) There are no differences between the House bill and Senate amendment.

LC

(76) The House bill and the Senate amendment are the same, except the House bill includes a requirement that the BIA distribute 80% of its funds to BIA schools by July 1 of the fiscal year and 20% of the funds by September 30 of the fiscal year.

SR

(77) There are minor wording differences between the House bill and Senate amendment, but the content is the same.

LC

(78) There are no significant differences between the House and Senate amendments, except the House bill requires an annual report from the Secretary of the Interior while the Senate amendment requires a biennial report.

HR

(79) There are minor wording differences between the House and Senate amendments but the content is the same.

LC

(80) There are no significant differences between the House and Senate amendments, except for differences in section numbers between the two bills.

LC

(81) There are no significant differences between the House and Senate amendments, except for differences in section numbers between the two bills.

LC

(82) The House bill and Senate amendment establish slightly different patterns toward reaching the 40% goal.

HR

(83) There are no differences between the House bill and Senate amendment.

LC

(84) The House bill requires State plans to “reasonably demonstrate” that the plan meets the requirements of the law. The Senate amendment requires States to “provide assurances” that the plan meets the requirements of the law.

HR

(85) The House bill includes this technical language as part of its structure to keep section 612(a)(12) as current law. The Senate amendment replaces the entire existing law.

LC

(86) There are no differences between the House bill and Senate amendment.

LC

(87) The Senate amendment exempts States from FAPE requirements if the State provides services to children through the part C program that are eligible for the 619 program. The House bill has similar language as part C.

HR

(88) The Senate amendment, but not the House bill, includes language regarding children with disabilities who are homeless or are wards of the State.

HR

(89) The House bill and Senate amendment have the same definition of least restrictive environment. The House bill requires that if a State distributes funds through a mechanism based on the child's setting, such formula cannot result in violations of the LRE requirements. The House bill also requires States to modify funding mechanisms that do not comply with that requirement. The Senate amendment prohibits a funding mechanism that violates the LRE requirements and requires States to revise any funding mechanism that violates that requirement.

HR

Report language:

“The conferees are concerned that some States continue to use funding mechanisms that provide financial incentives for, and disincentives against, certain placements. It is the intent of the changes to Section 612(a)(5)(B) to prevent State funding mechanisms from affecting appropriate placement decisions for students with disabilities.”

“The law requires that each public agency shall ensure that a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services. State funding mechanisms are in place to ensure funding is available to support the requirements of this provision, not to provide an incentive or disincentive for placement. Part B's LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment. Through the Individual Education Plan (IEP) process the Team shall make placement decisions that are individually determined on the basis of each child's abilities and needs. The new provisions in this section were added to prohibit States from maintaining funding mechanisms that violate appropriate placement decisions, not to require States to change funding mechanisms that support appropriate placements decisions.”

(90) The House bill and Senate amendment are substantially the same except the House bill, but not the Senate amendment, requires that children with disabilities also be evaluated in accordance with section 614 (c).

SR

(91) The House bill and Senate amendment are similar, with the Senate amendment adding a clause referring to the Senate language allowing a child to stay in the Part C program until kindergarten, instead of moving to the Section 619 program at age 3.

HR

(92) The House bill and Senate amendment include similar requirement, except the Senate amendment requires a written explanation by LEAs when they disagree with private school officials, a written affirmation from private school officials about consultation, and the provision of direct services (to the extent practicable) private schools. Also, the Senate amendment does not include the supplement, not supplant language included in the House bill. The House bill also contains specific sections regarding thorough child find when calculating the proportionate share of Federal funds and regarding services to be provided by employees of a public agency or through a contract by a public agency.

SR with an amendment to read as follows:

“(10) Children in private schools.--

(A) Children enrolled in private schools by their parents.--

(i) In general.--To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally-placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) In calculating the proportionate share of Federal funds, the local educational Agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child-find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

(III) Such services to children with disabilities parentally-placed may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this paragraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.

(ii) Child-find requirement.--

(I) In general.--The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary and secondary schools.

(II) Equitable participation.--The child-find process shall be designed to ensure the equitable participation of parentally-placed private school children and an accurate count of such children.

(III) Activities.--In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

(IV) Cost.--The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period.--Such child-find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

(iii) Consultation.--To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a state educational agency, shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for these children including--

(I) the child-find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under this paragraph, including the determination of how those funds were calculated;

(III) the consultation process among the local educational agency private school officials, and representatives of parents of parentally-placed private school children with disabilities including how such process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally-placed private school children, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

(iv) Written Affirmation.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of

time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

(v) Compliance.--

(I) In general.--A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) Procedure.--If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

(vi) Provision of equitable services.--

(I) Directly or through contracts. The provision of services under this Act shall be provided-

(aa) by employees of a public agency; or

(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

(II) Secular, Neutral, Nonideological.--Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

(vii) Public control of funds.-- The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

(B) Children placed in, or referred to, private schools by public agencies.--

(i) In general.--Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) Standards.--In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency.--

(i) In general.--Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the

parents elected to place the child in such private school or facility.

(ii) **Reimbursement for private school placement.--**If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) **Limitation on reimbursement.--**The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section [615(b)(7)], of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) **Exception.--**Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--

(I) shall not be reduced or denied for failure to provide such notice if--

(aa) the school prevented the parent from providing such notice; or

(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.”

(93) There are no differences between the House bill and Senate amendment.

SR with an amendment:

Add an (11)(A)(iii):

“(iii) in carrying out this part with respect to homeless children and youth, the requirements of subtitle B of the McKinney-Vento Homeless Assistance Act are met.”

(94) The House bill did not make any changes to current law in this section. The Senate amendment includes minor technical changes to current law regarding authority to claim reimbursement, methods of determining responsibility, and updated section numbers.

HR

(95) The House bill includes this technical language as part of its structure to keep section 612(a)(12) as current law. The Senate amendment replaces the entire existing law.

LC

(96) There are no differences between the House bill and Senate amendment.

LC

(97) The House bill requires the State plan to include standards to ensure that all special education teachers are highly qualified in core academic subjects; that standards for all related services personnel and paraprofessionals are set to ensure the providers are qualified to provide services, and that the SEA develops innovative strategies for professional development. The Senate amendment requires all special education teachers to be highly qualified by the end of the 2006-2007 school year, requires States to inform parents about the qualifications of the teachers, requires States to adopt policies to recruit, train, and retain highly qualified personnel, and establishes that those requirements do not create a right to action.

HR with an amendment:

Strike references to “standards” and replace with “qualifications” throughout and strike “not later than the end of the 2006-2007 school year.” in (C)(i) and in (ii)(II).

Report language:

“Conferees are cognizant of the difficulties that some local educational agencies have experienced in recruiting and retaining qualified related services providers and have provided greater flexibility to State educational agencies to establish appropriate personnel standards.”

“Conferees are concerned that language in current law regarding the qualifications of related services providers has established an unreasonable standard for State educational agencies to meet, and as a result, has led to a shortage of the availability of related services for students with disabilities.

“Conferees intend for State educational agencies to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. State educational agencies are encouraged to consult with

local educational agencies, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related service providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEP's."

(98) The House bill and Senate amendment are the same except the Senate amendment adds a requirement that States establish performance goals for graduation rates.

HR with an amendment:

Insert "which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education act of 1965." at the end of subparagraph (C)

(99) The House bill and Senate amendment include similar requirements except the Senate amendment adds requirements for alternate assessments, reporting requirements relating to students with disabilities taking alternate assessments, and requirements regarding universal design. Both the House bill and Senate amendment require that alternate assessments have been developed and conducted.

HR with an amendment:

Strike "accountability systems" throughout

(100) The House bill requires States to develop voluntary binding arbitration system. The Senate amendment does not include this requirement.

HR

(101) There are no significant differences between the House bill and Senate amendment.

HR/LC

(102) There are no significant differences between the House bill and Senate amendment.

HR/LC with an amendment:

**Strike paragraph (20) and insert the following, and renumber subsequent paragraphs:
“(20) Rule of Construction-In complying with paragraphs 612(a)((18) and (19), a state may not use funds paid to it under this part to satisfy state-law mandated funding obligations for local educational agencies, including funding based on student attendance or enrollment, or inflation.”**

(103) There are no significant differences between the House bill and Senate amendment.

HR/LC

(104) The House bill requires the panel to be comprised of a majority of individuals with disabilities or parents of children with disabilities ages birth through 26. The Senate amendment

requires the panel to be comprised of a majority of individuals with disabilities ages birth through 26 or parents of children with disabilities ages birth through 26.

The Senate amendment, but not the House bill, adds requirements of the types of parents that must be on the panel.

The Senate amendment, but not the House bill, adds additional parties that must be represented on the panel.

SR with an amendment:

Strike clause (v) from the House bill and insert clause (v) from the Senate amendment
Insert “(xi) a representative from the State child welfare agency responsible for foster care.”

(105) The House bill, but not the Senate amendment, requires suspension and expulsion rates to be disaggregated by race and ethnicity.

SR

(106) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(107) The House bill and Senate amendment include similar language requiring States to adopt the national instructional materials accessibility standard and requiring States to modify their contracts to obtain accessible materials.

The House bill, but not the Senate amendment, has a definition of instructional materials.

The Senate amendment, not the House bill, includes a requirement for the establishment of a national center for instructional materials.

HR with an amendment as follows:

Strike “675(a)” and insert “674(d)(3)(A)” in subparagraph (A)

HR with an amendment as follows:

Insert subparagraph (B) to read as follows, and redesignate the other paragraphs accordingly:

“(B) RIGHTS OF STATE EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any State educational agency to participate in the National Instructional Materials Access Center. If a State educational agency chooses not to participate, such agency shall provide an assurance to the Secretary that it will provide

instructional materials to blind persons or other persons with print disabilities in a timely manner.”

HR with an amendment to strike the new (C) and insert the following:

“(C) PREPARATION AND DELIVERY OF FILES.—If a State educational agency chooses to participate in the National Instructional Materials Access Center, not later than 2 years after the date of enactment [of the Individuals with Disabilities Education Improvement Act of 2004-not sure we need since we have an enactment clause?], such agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—
 (i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 674(d), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or
 (ii) purchase instructional materials from a publisher that are produced in or may be rendered in the specialized formats described in section 674(d)(3)(C).”

(108) The House bill, but not the Senate amendment, requires States to adopt policies to prevent overidentification by race or ethnicity.

SR with an amendment:

Insert “(c)” after “618” and strike “the identification of children as”

(109) The House bill, but not the Senate amendment, requires States to adopt policies regarding psychotropic medication.

HR with an amendment to read as follows:

“(25) Prohibition on mandatory medication.

(a) IN GENERAL- The State educational agency shall prohibit State and local educational personnel from requiring a child to obtain a prescription for substances covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation under section 614 (a) and (c) or receiving services.

(b) RULE OF CONSTRUCTION- Nothing in subsection (a) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under section 612(a)(3).”

(110) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(111) There are no differences between the House bill and Senate amendment.

HR/LC

(112) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(113) There are no significant differences between the House bill and Senate amendment.

LC

(114) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(115) There are no differences between the House bill and Senate amendment.

LC

(116) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

LC

(117) There are no differences between the House bill and Senate amendment.

LC

(118) The House bill makes no changes to current law in this section. The Senate amendment largely follows current law, except that the Senate amendment makes changes to require the Secretary to determine whether the State has failed or is unwilling to provide for the equitable participation of private school students.

HR

(119) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

LC

(120) The House bill requires the LEA to “reasonably demonstrate” that the LEA meets the conditions, while the Senate amendment requires the LEA to “provide assurances” that the LEA meets the conditions.

HR

(121) There are no differences between the House bill and Senate amendment.

LC

(122) The House bill allows LEAs to treat 20% of the increase from one year to the next as local funds to be used for educational programs authorized under ESEA, unless the SEA determines that the LEA has not provided FAPE to its students with disabilities. The Senate amendment allows LEAs to treat 8% of their funds as local funds each year. The Senate amendment allows LEAs to treat not more than 40% of their funds as local funds in any year that the maximum amount for State grants is provided under 611. The Senate amendment requires any LEA that exercises this authority to include that in its calculation of funds reserved for prereferral services.

SR with an amendment to read as follows:

“(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.—

(i) AMOUNTS IN EXCESS.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.—If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

(iii) STATE PROHIBITION.—Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

(iv) SPECIAL RULE.—The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).”

Report language:

“The Conferees intend for school districts to have meaningful flexibility to use local funds that are generated from their reduction in the maintenance of effort. The Conferees do not intend that school districts have to use these local funds for programs exclusively authorized under the Elementary and Secondary Act of 1965. The conferees recognize that most state and local education programs are consistent with the broad flexibility that is provided in Sec 5131 of the Elementary and Secondary Education Act of 1965.

“The Conferees intend that in any fiscal year in which the local educational agency or State educational agency reduces expenditures pursuant to section 613(a)(2)(C) or section 613(j), the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year.”

(123) The Senate amendment, but not the House bill, allows these Federal funds to be treated as local funds in calculating local shares under Medicaid.

The Senate amendment also requires LEAs to report to SEAs on the amount of funds treated as local funds each year.

SR

(124) The House bill and Senate amendment refer to different sections of ESEA regarding programs of personnel development.

HR

(125) The House bill and Senate amendment include similar allowable uses of funds for LEAs, except the House bill also allows funds to be used for high cost reserve funds and supplemental services provided under ESEA.

HR with an amendment:

Insert subparagraph (C) from House bill

(126) The House bill and Senate amendment are essentially the same.

HR with an amendment:

Rewrite subparagraph (B) to read as follows:

“(B) provides funds under this part to those charter schools on the same basis as it provides those funds to its other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as such agency distributes other Federal funds to its other schools, consistent with State’s charter school law.”

(127) The House bill and Senate amendment include a similar requirement requiring LEAs to use the national instructional materials accessibility standard when purchasing instructional materials.

HR with an amendment to read as follows:

“(6) INSTRUCTIONAL MATERIALS.—

(A) PURCHASE.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to participate in the National Instructional Materials Access Center, such agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).

(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any local educational agency to participate in the National Instructional Materials Access Center. If a local educational agency chooses

not to participate, such agency shall provide an assurance to the State educational agency that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.”

(128) There are no significant differences between the House and Senate amendments.

LC

(129) There are no significant differences between the House bill and Senate amendment.

LC

(130) There are no differences between the House bill and Senate amendment.

HR/LC

(131) There are no differences between the House bill and Senate amendment.

LC

(132) There are no differences between the House bill and Senate amendment.

LC

(133) There are no differences between the House bill and Senate amendment.

LC

(134) Using different names and different methods of identifying children as eligible for these activities, both the House bill and Senate amendment allow LEAs to use up to 15% of their funds to provide services to students before they are identified with a disability.

HR with an amendment:

Strike “who do not meet the definition of a child with a disability under section 602(3)” and insert “who have not been identified as needing special education or related services”

(135) The House bill and Senate amendment allow similar activities such as professional development evaluations, and behavioral supports. The Senate amendment also allows LEAs to use funds to develop and implement interagency financing structures.

HR with an amendment:

Strike paragraph (C)

(136) There are no differences between the House bill and Senate amendment.

LC

(137) The House bill and Senate amendment require similar reporting requirements, with the House bill adding a requirement that LEAs report on children served for two years.

SR

Report language:

“The Conferees want to ensure that information is provided on the impact that the early intervening services have on children to determine if these activities have reduced the numbers of referrals to special education. Local educational agencies are required to report on the number of students who are served under this activity for two years to determine if the provision of services under this activity reduces the number of overall referrals to special education and related services. The Conferees intend that the two-year period apply to the two years after the child has received services under this activity.”

(138) The House bill and Senate amendment allow funds used in the section to be aligned with ESEA activities so long as the IDEA funds supplement, but not supplant, other Federal funds for those activities.

HR with an amendment:

Strike “Certain Projects Under” from heading

(139) The House bill does not include this GAO study.

SR

(140) There are no differences between the House bill and Senate amendment.

LC

(141) There are no differences between the House bill and Senate amendment.

LC

(142) The Senate amendment, but not the House bill, gives States that are the providers of special education or pay for 80% or more of the non-federal share of special education costs, the same options that LEAs have to treat a certain portion of its IDEA funds if the State adheres to the requirements of the Act.

SR with an amendment to read as follows:

“(j) STATE AGENCY FLEXIBILITY.—

(1) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.—For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if

the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

(2) **PROHIBITION.**—Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

(3) **EDUCATION ACTIVITIES.**—If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

(4) **REPORT.**—For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

(5) **LIMITATION.**—Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.”

(143) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(144) The House bill and Senate amendment are similar, with the House bill adding parental consent in the heading.

SR

(145) The House bill and Senate amendment have similar language regarding initial evaluations, with the Senate amendment requiring that such evaluations take place within 60 days unless the State has an existing established time frame.

HR with an amendment to read as follows:

“(C) PROCEDURES.

(i) **In General.** Such initial evaluation shall consist of procedures--

(I) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception. The relevant timeframe in subparagraph (i)(I) shall not apply to a local educational agency if –

(I) a child enrolls at a local educational agency after the relevant timeframe in subparagraph (i)(I) has begun and prior to a determination by the child’s previous local educational agency as to whether a child is a child with a disability (as defined in section 602(3)), provided that the local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.”

(146a) The House bill provides guidance to parents and LEAs if the parent refuses consent for evaluation or initial services. The Senate amendment provides that the LEA is not in violation of FAPE if the parent refuses services.

SR with an amendment to read as follows:

“(ii) Absence of consent.--

(I) For initial evaluation.--If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

(II) For services.--If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

(III) Effect on agency obligations.-- If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent -

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for services for which the local educational agency requests such consent.”

(146b) The Senate amendment, but not the House bill, allows the school district to not seek parental consent for wards of the State if consent has been given by an appropriate official.

SR with an amendment to read as follows:

“(iv) EXCEPTION FOR WARDS OF THE STATE.-- If the child is a ward of the state and is not residing with the child’s parent, the agency shall make reasonable efforts to obtain the informed consent from the parents, as defined in section 602(22), of a child for an initial evaluation to determine whether the child is a child with a disability. In cases where –

- (I) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parents of such child;**
- (II) the rights of the parents have been terminated in accordance with State law; or**
- (III) the rights of the parents to make educational decisions have been subrogated by a judge in accordance with State law and consent has been given by an individual appointed by the judge to represent the child**

the agency shall not be required to obtain informed consent from the parents of a child for an initial evaluation to determine whether the child is a child with a disability.”

Report language:

“The conferees intend that in the case of children who are wards of the State, consent may be provided by individuals legally responsible for the child’s welfare or appointed by the judge to protect the rights of the child.”

(147) The House bill, but not the Senate amendment, provides that the screening of a child by a teacher or specialist shall not be considered an evaluation.

SR

(148) The House bill and Senate amendment have similar language regarding reevaluations, except the Senate amendment also allows that related services needs to factor in to the need for evaluation.

HR

(149) There are no differences between the House bill and Senate amendment.

HR

(150) The House bill and Senate amendment have similar requirements regarding the assessments used for evaluations. The House bill requires multiple up-to-date measures, while the Senate amendment requires a variety of assessment tools and strategies.

The Senate amendment also requires that the LEA not use any single procedure, measure or assessment as the sole criteria, while the House bill requires that the LEA not use any single measure or assessment.

HR with an amendment:

Strike “procedure” in 2(B)

(151) The House bill and Senate amendment have similar requirements with the House bill focusing on “assessments” and the Senate amendment focusing on “tests”.

The Senate amendment, but not the House bill, adds additional requirements for homeless children, wards of the State, and military children.

HR with an amendment:

Strike “tests” and insert “assessments” throughout

Strike (D) and insert a new (D) to read as follows:

“(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year, are coordinated with such children's prior and subsequent schools as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.”

Report language:

“The Conferees recognize that the high mobility rates of some children, including homeless children and youth and children and youth in the custody of a state child welfare agency, may cause delays in the assessment process and in the provision of a free appropriate public education. In order to minimize such delays, the Conferees intend that local education agencies ensure that assessments for these children and youth be completed expeditiously, taking into consideration the date on which such children and youth were first referred for assessment in any local educational agency. Such assessments shall be made in collaboration with parents (including foster parents) and, where applicable, surrogate parents, homeless liaisons designated under Section 723(g)(1)(j)(ii) of the McKinney-Vento Homeless Assistance Act, court appointed special advocates, a guardian ad litem, or a judge.”

(152) The House bill and Senate amendment have similar language except the House bill adds the requirement that the evaluation team and the parents determine the educational needs of the child.

SR

Report language:

“Conferees intend the evaluation process for determining eligibility of a child under this Act to be a comprehensive process that determines whether the child has a disability, and as a result of that disability, whether the child has a need for special education and related services. As part of the evaluation process, conferees expect the multi-disciplinary evaluation team to address the educational needs of the child in order to fully inform the decisions made by the IEP Team when developing the educational components of the child’s IEP. Conferees expect the IEP Team to independently review any determinations made by the evaluation team, and that the IEP Team will utilize the information gathered during the evaluation to appropriately inform the development of the IEP for the child.”

(153) The House bill and Senate amendment have the similar language except the House bill expands on the definition of reading by referring to ESEA definition of scientifically based reading practices.

SR with an amendment:

Strike (A) and insert a new (A) to read as follows:

“(A) lack of appropriate instruction in reading, including in the essential components of reading as defined in Sec. 1208(3) of ESEA of 1965.”

(154) The Senate amendment, but not the House bill, requires that the determination of the diagnosis of specific learning disability falls under the evaluation procedures.

HR

(156) The House bill specifies that classroom-based assessments should be local or State assessments and requires the evaluation to determine whether the child continues to have educational needs based on the child’s academic achievement. The Senate amendment requires the reevaluation to determine the particular category of disability.

SR with an amendment:

Insert comma before “local” in (c)(1)(A)

(157) The House bill and Senate amendment have similar language, except for the difference in referring to assessments in the House bill and tests in the Senate amendment, and the inclusion of procedures in the Senate amendment.

SR

(158) There are no differences between the House bill and Senate amendment.

LC

(159) The House bill and Senate amendment have similar language, except for the House bill requiring the evaluation to determine the educational need of the child.

SR

(160) The House bill requires a reevaluation prior to graduation and before determining the child no longer has a disability only if the IEP Team is not in agreement regarding that decision. The Senate amendment requires a reevaluation prior to determining the child no longer has a disability. The Senate amendment requires the LEA to provide a summary of the child’s performance to a student that is graduating or exceeding the age eligibility under State law.

HR

(161) The House bill and Senate amendment have similar language except the Senate amendment also requires functional performance to be part of the present levels of performance.

HR

(162) The House bill establishes requirements for the inclusion of benchmarks or short-term objectives in the child’s IEP for students taking alternate assessments aligned to alternate standards.

SR with an amendment:

**Strike (d)(1)(A)(I)(cc) and replace with new (d)(1)(A)(I)(cc) to read as follows:
“for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.”**

(163) The House bill and Senate amendment include similar language regarding annual goals, with the Senate amendment also requiring that the IEP include quarterly reporting on progress towards those annual goals. The House bill includes a regular reporting requirement in (VII), see note 166.

HR

(164) The House bill and Senate amendment have similar requirements, with the House bill including a requirement that related services be based on peer-reviewed research to the extent practicable.

SR

(165) The House bill requires the IEP team to explain why the regular assessment is not appropriate and how the child will be assessed. The Senate amendment requires the IEP team to explain why the child cannot participate in the regular assessment and why the alternate assessment is appropriate.

HR

(166) The House bill requires the IEP team to plan for transition at age 14 and implement a transition plan by age 16. The Senate amendment requires all transition planning and services to start at age 14.

HR with an amendment:

Strike “14” and insert “16”

(167) The House bill requires the IEP to report progress toward the annual goals in the same frequency as LEAs report progress on non-disabled students. Senate has similar requirement in earlier provision (see note 163).

HR

(168) There are no significant differences between the House and Senate amendments.

HR

(169) There are no differences between the House bill and Senate amendment.

LC

(170) Both the House bill and Senate amendment require a regular education teacher to be on the IEP team, but the House bill, and not the Senate amendment, allows the regular education teacher flexibility in which parts of the meetings they attend. The House bill also allows one regular education teacher to serve as a representative if the child has multiple regular education teachers. See note 172 for similar Senate provision.

HR

(171) The House bill refers to the general education curriculum while the Senate amendment refers to the general curriculum.

The Senate amendment, but not the House bill, specifies that a child who is a ward of the State may have an appropriate official at the IEP Team meeting.

SR

(172) The Senate amendment allows an IEP team member flexibility in which parts of the meetings they attend so long as the parent and LEA agree and so long as the excused member submits input prior to the IEP meeting. See note 170 and 177 for similar House provision.

HR with an amendment:

Insert “to the IEP team” after “submits” in (C)(ii)(II)

HR with an amendment:

Strike “that member,” in (C)(i) and (C)(ii)(I), and the “,” after “parent” in (C)(ii)(I), and insert “in writing to the parent and IEP team” after “input” in (C)(ii)(II)

HR with an amendment:

Insert (D) to read as follows:

“(D) IEP TEAM TRANSITION. In the case of a child who was previously served under Part C, an invitation to the initial IEP meeting to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.”

Report language:

“The Conferees recognize that ensuring that a smooth transition from the Part C system to the Preschool Program or to school is vital for a child's educational success. It is the Conferees' intent that during the initial IEP meeting for a child transferring from the Part C program the types of services the child received as part of the IFSP are discussed. The Conferees understand that services provided through the Part B program may differ in frequency, duration, and environment, however, the IEP Team should explain the changes in services in the initial IEP meeting. The Conferees do not intend that a State or district reduce any service a child would be otherwise eligible for under Part B.”

(173) The House bill, but not the Senate amendment, requires the IEP team to consider the IFSP when developing an IEP.

The Senate amendment, but not the House bill, requires that IEPs transfer with a child from one district to another, or State to State.

SR with an amendment:

Insert (C) to read as follows:

“(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

(i) IN GENERAL.--

(I) In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to section 614(a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) TRANSMITTAL OF RECORDS.--To facilitate the transition for a child described in clause (i) –

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled pursuant to 34 CFR 99.31(a)(2), and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.”

(174) The House bill and Senate amendment have similar language, in different order, and the Senate amendment adds a requirement that the functional needs of the child are considered.

HR

Report language:

“The Conferees understand that the development of a child’s IEP involves many considerations and decisions on how best to create an education program that serves the needs of the individual child. The Conferees intend that the uniqueness of each child help guide these decisions, including the child’s strengths, characteristics, and background when developing the IEP.”

(175) The Senate amendment, but not the House bill, requires that IEPs provide behavioral interventions for children whose behavior impedes their own learning or that of others. The Senate amendment also requires the IEP team to consider a larger list of services for blind students.

SR

(176) The House bill, but not the Senate amendment, allows for the possibility that the regular education teacher may not be part of the IEP team if appropriately determined.

HR

(177) The House bill allows an IEP team member flexibility in which parts of the meetings they attend so long as the parent and LEA agree and so long as the excused member submits written input prior to the IEP meeting. See note 172 for similar Senate provision.

HR

(178) The House bill encourages consolidation of IEP meetings while the Senate amendment encourages consolidation of reevaluations with the IEP Team meeting.

HR with an amendment:

Strike (E) and insert new (E) to read as follows:

“(E) Consolidation of IEP Team Meetings. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.”

(179) The House bill, but not the Senate amendment, specifies that changes to the IEP can be done by amendment, instead of rewriting the entire IEP.

SR with an amendment:

Insert “Upon request, a parent shall be provided an executed copy of the IEP.” at the end of subparagraph (G).

(180) The House bill, but not the Senate amendment, allows for the possibility that the regular education teacher may not be part of the IEP team if appropriately determined.

HR

(181) Both the House bill and the Senate amendment allow the LEA to offer to parents the ability to develop a comprehensive 3-year IEP, if the parents choose to develop such an IEP. The House bill allows this to be done for all children that receive special education. The Senate amendment restricts this option to students age 18 that stay within the educational system.

SR with an amendment to read as follows:

“(5) MULTI-YEAR IEP DEMONSTRATION.--

(A) PILOT PROGRAM.--

(i) PURPOSE.--The purpose of this subsection is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(ii) AUTHORIZATION.-- In order to carry out the purpose of this subsection, the Secretary is authorized to approve not more than 15 States based on proposals submitted by States to allow parents and local educational agencies the opportunity plan for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

(iii) PROPOSAL.--

(I) IN GENERAL.--A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(II) CONTENT.--The proposal shall include--

(aa) assurances that the parent must consent to the option of developing a comprehensive multi-year IEP;

(bb) a list of required elements for each multi-year IEP, including—

(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

(BB) measurable annual goals for determining progress toward meeting the goals described in subitem(AA); and

(cc) a description of the process for the review and revision of each multi-year IEP, including—

(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved; and to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a local educational agency will ensure that the IEP Team reviews the IEP within 30 calendar days; and

(DD) at the request of the parent, the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

(B) REPORT.--Beginning 2 years after the date of enactment, the Secretary shall submit an annual report to the Committee on Education and the Workforce in the House of Representatives and the Health, Education, Labor and Pensions Committee

in the Senate regarding the effectiveness of the program and any specific recommendations for broader implementation of such program including

(i) reducing—

(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

(II) noninstructional time spent by teachers in complying with this part;

(ii) enhancing longer-term educational planning;

(iii) improving positive outcomes for children with disabilities;

(iv) promoting collaboration between IEP Team members; and

(v) ensuring satisfaction of family members.”

(C) Definition.--As used in this paragraph, the term `natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to high school grades, and from high school grades to post-secondary activities, but in no case longer than 3 years.”

(182) There are no significant differences between the House bill and Senate amendment.

LC

(183) The Senate amendment, but not the House bill, requires that placements of homeless children with disabilities comply with the McKinney-Vento Homeless Assistance Act.

The House bill, but not the Senate amendment, allows for alternative means of meeting participation for meetings under section 615.

SR with an amendment:

Strike “and 615” in (f) and insert “, 615(e) and (f)(1)(B), and administrative matters under 615 (such as scheduling, exchange of witness lists and status conferences)”

(184) The House bill includes a Sense of Congress regarding the need to have a disability diagnosis performed by a physician or licensed health care professional. The Senate amendment does not include this provision.

HR

(185) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(186) The Senate amendment, but not the House bill, includes language regarding children who are wards of the State.

SR

(187) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(188) The House bill and Senate amendment include similar language, except the House bill modifies the need for an independent evaluation to be done as appropriate.

HR

(189) The Senate amendment, but not the House bill, includes language regarding homeless children and children who are wards of the State.

SR with an amendment:

Rewrite (b)(2) to read as follows:

“(b)(2)(A) IN GENERAL- procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents. In the case of -

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph;

(ii) an unaccompanied homeless youth as defined in Sec 725(6) of the McKinney-Vento Homeless Assistance Act, the LEA shall appoint a surrogate in accordance with this paragraph.

(B) TIME REQUIREMENT – The State shall make reasonable efforts to ensure the assignment of the surrogate not more than 30 days after there is a determination made by the agency that the child needs a surrogate.”

Report language:

“In light of the fact that unaccompanied homeless youth are a particularly mobile population, once the school district has made a determination that such youth require a surrogate, the Conferees encourage States or local educational agencies where allowed by law to quickly appoint a surrogate or refer the child to the child welfare system if consistent with State law. The Conferees recognize that, because the parents of homeless unaccompanied youth may be unavailable or unwilling to participate in the youth’s education, homeless unaccompanied youth face unique problems in obtaining a free appropriate public education. Accordingly, the Conferees intend that the surrogate parent process be available for such youth, to ensure that they are provided with a free appropriate public education. Furthermore, the Conferees intend that appropriate staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs not be considered to be employees of agencies involved in the education or care of youth, for purposes of the prohibition of certain agency employees from acting as surrogates for parents as set forth in Sec. (b)(2)(A), provided that a such role is temporary until a surrogate can be appointed that meets the requirements and such

role in no way conflicts with, or is in derogation of, the provision of a free appropriate public education to these youth.”

(190) There are minor wording differences between the House and Senate amendments, but the content is the same.

LC

(191) There are no differences between the House bill and Senate amendment.

LC

(192) The House bill adds a requirement for voluntary binding arbitration that the Senate amendment does not include.

HR

(193) The House bill and Senate amendment have similar language regarding the opportunity to present complaints, but the House bill, not the Senate amendment, includes language establishing a 1 year statute of limitations on the right to present complaints. Senate has a 2 year timeline for filing complaints at note 221.

SR with an amendment to read as follows:

“(6) an opportunity to present complaints--

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which set forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint.”

(194) The Senate amendment, but not the House bill, allows for either party to file a due process complaint.

The House bill requires the complaint to have a description of the specific issues while the Senate amendment requires a description of the nature of the problem.

HR

(195) The Senate amendment, but not the House bill, requires the LEA to send a prior written notice to a parent if the LEA has not already done so, after a parent has filed a due process complaint.

SR

(196) The Senate amendment, but not the House bill, requires the SEA to develop model forms for the complaint notice.

HR

(197) The Senate amendment, but not the House bill, includes procedures for children who are wards of the State.

SR

(198) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(199) The Senate amendment, but not the House bill, requires the notice to include what options the agency considered but did not include, and why. The Senate amendment, but not the House bill, requires a description of any other factors relevant to the agency's proposal or refusal.

SR with an amendment:

Insert (C) as amended by striking “any other options that the agency considered” and inserting “other options considered by the IEP team” and insert (E) as amended by striking “any other” and inserting “the”

(200) The Senate amendment, but not the House bill, presumes that the complaint is sufficient unless a party submits an objection to the notice, establishes timelines and procedures to support this rule, and requires the other party to receive the notice.

The Senate amendment, but not the House bill, also allows parents to amend their complaint if the hearing officer or other party consents, with timelines restarting at the time the amendment is filed.

HR with an amendment:

Strike “only” and insert “not later than 5 days” in (2)(D)(i)(II)

HR with an amendment:

Insert “, including the timeline under subsection (f)(1)(B)” after “notice” in (2)(D)(ii)

HR with an amendment:

Strike “20” and insert “15” in paragraph (B)

HR with an amendment:

Modify (2)(A) as follows:

“(2) DUE PROCESS COMPLAINT NOTICE.

(A)(i) PARENT COMPLAINT. The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of that subsection.

(ii) RESPONSE. If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall within 10 days send to the parent a response that shall include—

(I) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(II) a description of other options that the IEP team considered and the reasons why those options were rejected;

(III) a description of each evaluation procedure, test, record or report the agency used as the basis for the proposed or refused action; and

(IV) a description of the factors that are relevant to the agency's proposal or refusal.

(iii) SUFFICIENCY. A response filed by a local educational agency pursuant to clause (ii) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient, where appropriate."

(201) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(202) The Senate amendment, but not the House bill, requires a notice whenever a due process complaint is filed.

HR with an amendment:

Rewrite (d)(1) to read as follows:

"(d) PROCEDURAL SAFEGUARDS NOTICE.

(1) IN GENERAL.--

(A) A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents-

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the registration of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

(B) The local educational agency may place a current copy of the procedural safeguards notice on its Internet website, if such website exists."

(203) The House bill and Senate amendment contain similar language, except the House bill requires a description of the safeguards while the Senate amendment requires a full explanation.

HR

(204) The Senate amendment, but not the House bill, requires the notice to include time period requirements and a description of the State-level appeal. The House bill does not include a State-level appeal system.

HR

(205) The House bill, but not the Senate amendment, requires a description of the voluntary binding arbitration system. The Senate amendment does not include that option.

HR

(206) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(207) The House bill, but not the Senate amendment, creates a Voluntary Binding Arbitration system in the title of this section.

HR

(208) Senate amendment, but not House bill, specifies that a mediation agreement is enforceable in court.

HR with an amendment:

Strike (F) and (G) and insert the following (F) and (G):

“(F) WRITTEN AGREEMENT. In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that –

(I) states that all discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;

(II) is signed by both the parent and a representative of the public agency who has the authority to bind such agency; and

(III) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) MEDIATION DISCUSSIONS. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.”

Report language:

“The conferees intend that the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process to ensure that all discussions that occur during the mediation process remain confidential irrespective of whether the mediation results in a resolution.”

(209) The House bill, but not the Senate amendment, requires States to develop a voluntary binding arbitration system for the resolution of disputes.

HR

(210) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(211) The House bill does not provide for a State-level appeal system, so eliminates the dual-tier language. The Senate amendment maintains the State-level appeal.

HR

(212) Both the House bill and Senate amendment require the LEA and parent of a child with a disability to meet within 15 days of a parent's complaint being filed to attempt to resolve the complaint. The Senate amendment requires the meeting to include the IEP team and a person with decision making authority on behalf of the LEA. The House bill requires a meeting with the LEA and the parents. The House bill, but not the Senate amendment, operates within the regulatory 45 day timeline.

HR with an amendment:

Strike "Opportunity to Resolve Complaint" and insert "Resolution Session" in the heading

HR with an amendment:

Strike "and the IEP Team" and replace with "and the relevant member or members of the IEP team with specific knowledge of the facts identified in the complaint" in (B)(i)

HR with an amendment:

Strike "specific issues" and insert "facts" in subparagraph (B)(i)(IV)

Report language:

"The Committee intends that the relevant members be determined by the parents and LEA."

(216) The Senate amendment, but not the House bill, prevents the LEA from bringing an attorney to the preliminary meeting unless the parent brings their attorney. The House bill defines the resolution session as a non-administrative or judicial meeting, and the Senate amendment requires a written agreement to be signed by both parties if agreement is reached, and such agreement is to be enforceable in court.

HR with an amendment:

Strike (iii) and insert the following (iii) and (iv):

“(iii) WRITTEN SETTLEMENT AGREEMENT. In the case that a resolution is reached to resolve the complaint at such meeting, the parties shall execute a legally binding agreement that is –

(I) signed by both the parent and a representative of the public agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) REVIEW PERIOD. If the parties execute an agreement pursuant to clause (iii), each party has the opportunity to void such agreement within 3 business days of its execution.”

(217) The House bill and Senate amendment contain similar timeline requirements with the House bill requiring notice ‘at least 5 business days prior’ and the Senate amendment requiring ‘not less than 5 business days prior.’

HR

(218) The House bill and Senate amendment include similar language regarding who cannot conduct a hearing. The Senate amendment, but not the House bill, adds additional requirements regarding the qualifications of hearing officers.

HR with an amendment:

Rewrite (3)(A)(ii) to read as follows:

“(ii) possess knowledge of, and the ability to understand, the provisions of this Act, Federal and State regulations pertaining to this Act, and legal interpretations of this Act by Federal and State courts;”

(219) Both the House bill and Senate amendment include similar requirements about the subject matters that may be brought up during a hearing, but the Senate amendment, not the House bill, clarifies that either the parent or the LEA may request a due process hearing.

HR

(220) The Senate amendment, but not the House bill, includes a rule of construction allowing parents to file separate due process hearings on separate issues.

HR

Report language:

“The Conferees intend to encourage the consolidation of multiple issues into a single complaint where such issues are known at the time of the filing of the initial complaint.”

(221) The Senate amendment establishes a 2-year statute of limitations unless State law already has a statute of limitations. The House bill includes a 1-year statute of limitations (see note 193).

HR/LC

(222) The Senate amendment, but not the House bill, includes several exceptions to the requirements of a statute of limitations.

HR with an amendment to read as follows:

“(E) EXCEPTION TO THE TIMELINE. The timeline described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to--
 (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
 (ii) the local educational agency’s withholding of information from parents that was required to be provided to parents under this part.”

(223) The Senate amendment, but not the House bill, requires hearing officer decisions to be based on substantive grounds.

HR with an amendment:

Strike “compromised” and insert “impeded” in (F)(ii)(I) and strike “seriously hampered” and insert “significantly impeded” in (F)(ii)(II)

(224) The Senate amendment, but not the House bill, allows procedural violations to rise to the level of a substantive violation under certain circumstances.

HR with an amendment:

Strike “compromised” and insert “impeded” in (F)(ii)(I) and strike “seriously hampered” and insert “significantly impeded” in (F)(ii)(II)

(225) The Senate amendment, but not the House bill, allows for the existence of a State-level appeal system for due process hearings.

HR with an amendment:

Strike (G) and insert the following:

“(G) RULE OF CONSTRUCTION. Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency, if such agency offers and conducts such appeals.”

HR with an amendment:

Insert “if the State educational agency offers a state level appeals process” at the end of the first sentence in (g)

(226) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(227) The House bill, not the Senate amendment, allows for non-attorney advocates to represent parents at due process hearings. The Senate amendment, but not the House bill, allows for individuals with special knowledge to accompany and advise parents at due process hearings.

HR

(228) The Senate amendment, but not the House bill, allows for a State-level appeal system, and requires the transmittal of records to the State advisory panel.

HR

(229) The House bill includes technical changes to update language after removing the State-level appeal system. The Senate amendment replaces the entire existing law, but makes no changes in this section, except to add a 90 day limit for filing an appeal to court, unless State law provides for a different timeline.

HR

(230) The House bill includes technical changes to update language after removing the State-level appeal system.

HR

(231) The House bill requires the Governor to establish rates for attorney's fees and make those rates public. The Senate amendment places limitations on whether attorneys' fees can be awarded.

The Senate amendment clarifies that meetings conducted under the opportunity to resolve provision are not eligible for reimbursement for attorney's fees.

HR

(232) The Senate amendment clarifies that the parent's attorney's conduct may result in reduction of attorney's fees.

HR

(233) The Senate amendment allows parents to represent their child in court.

SR

(234) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(235) There are minor technical differences between the House bill and Senate amendment, but the content is the same.

LC

(236) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(237)- (245)

HR with an amendment to read as follows:

“(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

(1) AUTHORITY OF SCHOOL PERSONNEL.—

(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) AUTHORITY.—School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

(D) SERVICES. A child with a disability who is removed from the child’s current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child’s disability) or (C) shall—

(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) MANIFESTATION DETERMINATION.—

(i) **IN GENERAL.** Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent and relevant members of the IEP Team (as determined by the parent

and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) **MANIFESTATION.**—If the local educational agency, the parent and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.—If the local educational agency, the parent and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in the change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) SPECIAL CIRCUMSTANCES.—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; or

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) DETERMINATION OF SETTING.—The interim alternative educational setting in subparagraph (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) APPEAL.—

(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this

subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) AUTHORITY OF HEARING OFFICER.—

(i) **IN GENERAL.**—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) **CHANGE OF PLACEMENT ORDER.**—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may –

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

(A) **IN GENERAL.**—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) **BASIS OF KNOWLEDGE.**—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) **EXCEPTION.**— A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused

services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) LIMITATIONS.— If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.”

Report language:

“The Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented.

Additionally, it is the intention of the Conferees that when a student has violated a code of conduct school personnel may consider any unique circumstances on a case-by-case basis to determine to whether a change of placement for discipline purposes is appropriate. The Conferees intend that if a change in placement is proposed, the manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. The Conferees intend that in situations where the local educational agency, the parent and the relevant members of the IEP team determine that the conduct was the direct result of the child's disability, a child with a disability should not be subject to discipline in the same manner as a non-disabled child.

“The Conferees intend that in order to determine that the conduct in question was a manifestation of the child's disability, the local educational agency, the parent and the relevant members of the IEP team must determine the conduct in question be the direct result of the child's disability. It is intention of the Conferees that the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability.”

(246) There are no significant differences between the House bill and Senate amendment.

HR

(247) The House bill does not include these definitions.

HR

(248) The House bill includes this technical language as part of its structure. The Senate amendment adds language regarding the McKinney-Vento Act.

HR with an amendment:

Strike “or under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act or parts B and E of title IV of the Social Security Act”

(249) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(250) There are no significant differences between the House bill and Senate amendment.

HR/LC

(251) The Senate amendment allows parents to receive notices through email. The House bill does not include this provision.

HR

(252) The Senate amendment, but not the House bill, includes language requiring the appointment of a surrogate parent if determined necessary by the LEA.

SR

(253) – (258):

SR with an amendment to read as follows:

“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

(a) FEDERAL AND STATE MONITORING.—

(1) IN GENERAL.—The Secretary shall—

(A) monitor implementation of this part through—

(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

(ii) the State performance plans, described in subsection (b)

(B) enforce this part in accordance with subsection (e); and

(C) require States to—

(i) monitor implementation of this part by local educational agencies; and

(ii) enforce this part in accordance with paragraph (3) and subsection (e).

(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) **MONITORING PRIORITIES.**—The Secretary shall monitor the States, and shall require each State to monitor its local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators, in the following priority areas and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in section 602(33) and 637(a)(9).

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) **PERMISSIVE AREAS OF REVIEW.**—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

(b) State performance plans.—

(1) **PLAN.**—

(A) **IN GENERAL.**— Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this Act and describes how the State will improve such implementation.

(B) **SUBMISSION FOR APPROVAL.**— Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

(C) **REVIEW.**—Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) **TARGETS.**—

(A) **IN GENERAL.**—As a part of the plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

(B) **DATA COLLECTION.**—

(i) **IN GENERAL.**—Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

(ii) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this Act.

(C) **PUBLIC REPORTING AND PRIVACY.**—

(i) **IN GENERAL.**—The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

(ii) **REPORT.**—

(I) **PUBLIC REPORT.**—The State shall report annually to the public on the

performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

(II) STATE PERFORMANCE REPORT.—The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

(iii) PRIVACY.—The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

(c) APPROVAL PROCESS.—

(1) DEEMED APPROVAL.—The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) DISAPPROVAL.—The Secretary shall not finally disapprove the plan, except after giving the State educational agency notice and an opportunity for a hearing.

(3) NOTIFICATION.—If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

(A) give the State notice and an opportunity for a hearing; and

(B) notify the State of the finding, and in such notification shall--

(i) cite the specific provisions in the plan that do not meet the requirements; and

(ii) request additional information, only as to the provisions not meeting the requirements, needed to make the plan meet the requirements of this section.

(4) RESPONSE.—If the State educational agency responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the agency received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

(B) the expiration of the 120-day period described in paragraph (1).

(5) FAILURE TO RESPOND.—If the State educational agency does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the agency received the notification, such plan shall be deemed to be disapproved.

(d) SECRETARY'S REVIEW AND DETERMINATION.—

(1) REVIEW.—The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) DETERMINATION.—**(A) IN GENERAL.**—Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

- (i) meets the requirements and purposes of this part;
- (ii) needs assistance in implementing the requirements of this part;
- (iii) needs intervention in implementing the requirements of this part; or
- (iv) needs substantial intervention in implementing the requirements of this part.

(B) NOTICE AND OPPORTUNITY FOR A HEARING.—For any determinations made under subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

(e) ENFORCEMENT.—

(1) Needs Assistance.—If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(ii) in implementing the requirements of this Act, the Secretary shall take 1 or more of the following actions:

(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to partner with appropriate entities. Such technical assistance may include—

- (i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
- (ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
- (iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and
- (iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

(B) Direct the use of State level funds under section 611(e) on the area or areas in which the State needs assistance.

(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

(2) Needs Intervention.—If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(iii) in implementing the requirements of this Act, the following shall apply:

(A) The Secretary may take any of the actions in (1), and

(B) The Secretary shall take 1 or more of the following actions:

- (i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.
- (ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.
- (iii) Each year of the determination withhold not less than 20 and not more than 50 percent of the State's funds under section 611(e), until the Secretary

determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) **Needs Substantial Intervention.**—Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this Act or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

(A) Recover funds under section 452 of the General Education Provisions Act.

(B) Withhold, in whole or in part, any further payments to the State under this part.

(C) Refer the case to the Office of the Inspector General at the Department of Education.

(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) **OPPORTUNITY FOR HEARING.**—

(A) **WITHHOLDING OF FUNDS.**— Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

(B) **SUSPENSION.**—Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

(5) **REPORT TO CONGRESS.**—The Secretary shall report to the Committee on Education and the Workforce in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2) or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) **NATURE OF WITHHOLDING.**—

(A) **LIMITATION.**—If the Secretary withholds further payments pursuant to paragraphs (2) or (3), the Secretary may determine—

(i) that such withholding will be limited to programs or projects, or portions thereof, that affected the Secretary's determination in (d)(2); or

(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination in subsection (d)(2).

(B) **WITHHOLDING UNTIL RECTIFIED.**—Until the Secretary is satisfied that the conditions that caused the initial withholding has been substantially rectified—

(i) payments to the State under this part shall be withheld in whole or in part; and

(ii) payments by the State educational agency under this part shall be limited to

State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination in (d)(2), as the case may be.

(7) PUBLIC ATTENTION.—Any State educational agency that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) JUDICIAL REVIEW.—

(A) IN GENERAL.—If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

(f) STATE ENFORCEMENT.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under this part as local funds under section 613(a)(2)(C) for any fiscal year.

(g) RULE OF CONSTRUCTION.—Nothing under this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this Act.”

Report language:

“The Conferees believe that accurate decision making with regard to enforcement of the IDEA is required in order to: 1) ensure that federal dollars are being spent productively on education, and, 2) to ensure that monitoring and enforcement is administered fairly. It is our expectation that state performance plans, indicators, and targets will be developed with broad stakeholder input and public dissemination.

The Secretary is directed to monitor states using rigorous targets and to request such information from states and stakeholders as is necessary to implement the purposes of

IDEA, including the use of on-site monitoring visits and student file reviews, and to enforce the requirements of the IDEA.

Conferees strongly encourage the Secretary to review all relevant and publicly available data, including the data gathered under Section 618, related to the targets and priority areas established for reviewing the efforts of States and local educational agencies to implement the requirements and purposes of IDEA. The Secretary is also authorized to use qualitative measures to inform his decision-making process in determining the efforts of the State or LEA in implementing IDEA.

Conferees recommend that the Secretary diligently investigate any root causes prior to selecting enforcement options, so that enforcement options are appropriately selected and have the greatest likelihood in yielding improvement in that state. However, investigations must not unduly delay the enforcement action.”

(259) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(260) There are no differences between the House bill and Senate amendment.

HR

(261) The House bill prohibits the Federal Government from dictating the content of curriculum or instruction. The Senate amendment does not include that provision.

SR

(262) The Senate amendment, but not the House bill, includes authorization for the Secretary to hire personnel to carry out the Secretary’s duties under section 664.

SR

(263) The House bill allows the Secretary to grant waivers to 10 States to reduce paperwork. The Senate amendment includes this provision in note 46.

HR

(264) The Senate amendment requires the development of a model IFSP form, the House bill does not include that provision.

HR

(265) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(266) The House bill and Senate amendment contain similar requirements regarding data collection, except the House bill, and not the Senate amendment requires LEAs to submit the same data as States, and requires data on voluntary binding arbitration and children served with early intervening funds under 613(f). The Senate amendment, but not the House bill, requires disaggregation by gender, and by LEP status and gender on several indicators, data collection on students suspended for one day or more, the numbers of students sent to alternate settings due to discipline violations, the number of due process complaints and hearings held, and other data regarding discipline provisions.

HR with an amendment:

Strike (L)

(267) The House bill allows the Secretary to obtain information through sampling. The Senate amendment requires that the data not be able to identify individual children.

HR with an amendment:

Include both

(268) The Senate amendment allows the Secretary to provide technical assistance to States to collect data. The House bill does not include this provision.

HR

(269) The House bill and Senate amendment contain similar language, except the House bill requires data to be examined on ethnicity as well.

The House bill also requires States to use funds for prereferral services to address disproportionality if any is found and requires the LEA to publicly report on any revisions.

SR with an amendment:

Strike “preferral” and insert “early intervening” in (2)(B)

Report language:

“The Conferees believe that early intervening services should make use of supplemental instructional materials, where appropriate, to support student learning. Children targeted for early intervening services under IDEA are the very students who are most likely to need additional reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum. Per the requirements of NCLB, core curriculum must meet standards of scientific rigor. As supplementary materials to these core programs, they are aligned with and designed to reinforce the skills taught in these comprehensive research-based texts.”

(270) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(271) There are no differences between the House bill and Senate amendment.

LC

(272) There are no significant differences between the House bill and Senate amendment.

LC

(273) There are no significant differences between the House bill and Senate amendment.

LC

(274) There are no differences between the House bill and Senate amendment.

SR with an amendment:

Strike “, if the State educational agency is the lead agency for the State under that part” in (e)(2)

(275) The House bill, but not the Senate amendment, allows funds to support the implementation of a State plan under Part D if the State receives a grant. The Senate amendment, but not the House bill, allows funds to be used to provide services to children with disabilities under the Part C program until the child attends kindergarten.

HR with an amendment:

LC on “it retains” versus “the State reserves”

HR with an amendment:

Insert new paragraph (6) to read as follows:

“(6) at the State’s discretion, to continue service coordination or case management for families who receive services under part C.”

(276) There are no significant differences between the House bill and Senate amendment.

LC

(277) There are no differences between the House bill and Senate amendment.

LC

(278) The House bill authorizes \$500 million for FY 04 and such sums thereafter, while the Senate amendment authorizes such sums.

HR

Part C

(279) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(280) The House bill and Senate amendment have virtually the same findings, but the Senate amendments contains additional language on brain development.

HR

(281) There are no significant differences between the House and Senate amendments.

LC

(282) There are no differences between the House bill and Senate amendment.

LC

(283) The House bill requires services to be designed to address family-identified priorities, while the Senate amendment requires services to be designed to meet the developmental needs of the infant or toddler.

HR with an amendment to read as follows:

“(C) are designed to meet the developmental needs of an infant or toddler with a disability as identified by the individualized family service plan team in any 1 or more of the following areas:”

(284) The House bill and Senate amendment include minor differences in the services provided with the House bill adding family therapy and the Senate amendment adding sign language and cued language services.

HR

Report language:

“Conferees commend the Office of Special Education & Rehabilitative Services for developing updated early intervention materials that set out the full range of options for families with deaf and hard of hearing children who now have the potential to develop age appropriate language in whatever modality their parents choose. Dramatic improvements in hearing technology, both hearing aids and cochlear implants, provide new opportunities

for families who wish to pursue spoken language for their child with hearing loss. These new materials and efforts further the goals of the IDEA that early intervention personnel actively provide comprehensive and bias-free information on the range of language options available to a child with hearing loss, including the benefits of early amplification and/or early implantation of a cochlear implant.”

(285) The House bill and Senate amendment include minor differences in the personnel authorized to provide services with the House bill authorizing registered dietitians and the Senate amendment authorizing nutritionists. The Senate amendment also adds teachers of the deaf as a listed provider while the House bill does not.

SR

Report Language:

“The conferees intend that the term ‘special educators’ includes teachers of the deaf. The conferees recognize that with the recent dramatic rise in newborn hearing screening, more infants are being identified with hearing loss early and they need the services of teachers of the deaf who can meet their language and communication needs.”

(286) The House bill allows the State to use the Part C program to provide services to infants and toddlers up through age 5 if the services include an educational component and parents are advised of their rights to choose to move to the Section 619 program. The Senate amendment contains a similar program for children ages 3-5. See Section 635(b) of the Senate amendment.

HR with an amendment:

HR on structure of (5)(B) with an amendment to (5)(B)(ii) to read as follows:

“(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under state law to enter, kindergarten; provided that any programs under this part serving these children shall include-

(I) an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy skills, and

(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.”

(287) The Senate amendment, but not the House bill, includes language regarding homeless children, wards of the State, and military children.

SR with an amendment:

Insert “, infants or toddlers with disabilities who are homeless children, infants or toddlers with disabilities who are wards of the State,” after “including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State,”

(288) The Senate amendment establishes minimum levels of developmental delay that States must cover. The House bill does not include this language.

SR with an amendment:

Amend section 635(a)(1) to read “A rigorous definition of the term developmental delay that will be used for the state in carrying out programs under this part in order to appropriately identify infants and toddlers that are in need of services under this part”

Report language:

“The Conferees intend that States establish rigorous standards for identifying and serving infants and toddlers with developmental delays. The Conferees believe that these standards should encompass a sufficient scope of developmental delays to ensure that these infants and toddlers receive the benefit of Part C services designed to lessen the infant or toddler’s need for future or more extensive services.”

(289) The House bill, but not the Senate amendment, requires that early intervention services be based on scientifically based research.

SR with an amendment:

Rewrite (2) to read as follows:

“(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families and homeless infants and toddlers with disabilities and their families.”

SR with an amendment:

Add at the end of (5) “and that ensures rigorous standards for appropriately identifying infants and toddlers for services under this part that will reduce the need for future services”

(290) The House bill, but not the Senate amendment, requires an emphasis on informing parents of infants with risk factors on the availability of early intervention services.

The Senate amendment, but not the House bill, expands the list of places the public awareness program should focus on delivering information.

SR

Report Language:

“The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system.”

(291) There are no differences between the House bill and Senate amendment.

LC

(292) The House bill requires States to focus on three areas of personnel and allows States to focus on rural and inner city areas and emotional and social development areas. The Senate amendment permits States to focus on these areas and rural/urban areas.

SR

(293) The Senate amendment, but not the House bill, includes a provision allowing States to allow paraprofessionals to provide services in accordance with State law, regulation, or written policy.

HR

(294) There are no differences between the House bill and Senate amendment.

LC

(295a) The House bill requires that services be provided in a setting other than the natural environment only when intervention cannot be achieved satisfactorily in that setting. The Senate amendment requires that services be provided in the natural setting unless a specific outcome cannot be met.

SR with an amendment to read as follows:

“(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.”

Report language:

“The legislation amends current law to recognize that there may be instances when a child’s individualized family service plan cannot be implemented satisfactorily in the natural environment. The Conferees intend that in these instances, the child’s parents and the other members of the individualized family service plan team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided.”

(295b) The Senate amendment, but not the House bill, requires procedures for homeless children and wards of the State.

SR

(296) The Senate amendment does not include this requirement.

SR with an amendment to strike “consistent with State law within 3 years.”

(297) Both the House bill and the Senate amendment allow States to continue to provide services to children aged 3-5 in the Part C program, if the parent chooses to keep their child in that system. The Senate amendment consolidates its language in this section. The House bill incorporates language in multiple areas.

HR with an amendment to read as follows:

“(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL.—

(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

(A) that parents of children served pursuant to this subsection are provided with annual notice that provides —

(i) a description of such parents’ right to elect services pursuant to this subsection or under part B; and

(ii) an explanation of the differences between receiving services pursuant to this subsection and receiving services under part B, including—

(I) the types and location of services available under both provisions;

(II) applicable procedural safeguards under both provisions; and

(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

(B) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

(C) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

(D) the continuance of all early intervention services outlined in the child’s individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

(E) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to the subsection for such infants or toddlers; and

(F) that the requirements under section 637(a)(9) are deferred if the child is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference under section 637(a)(9)(A), not more than 9 months) before, the time the child will no longer receive services under this subsection.

(G) the referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence, as defined in section 309(1) of the Family Violence and Protection Services Act.

(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State’s report under section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

(4) RULES OF CONSTRUCTION.—

(A) If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child who is eligible for services under section 619, shall not be required to provide such child with a free appropriate public education under part B for the length of time in which such children are receiving services under this part.

(B) Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

(5) AVAILABLE FUNDS. If a Statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).”

(298) The Senate amendment, but not the House bill, includes this rule of construction regarding payment for certain procedures.

SR

(299) There are no differences between the House bill and Senate amendment.

HR

(300) There are no differences between the House bill and Senate amendment.

LC

(301) There are no significant differences between the House bill and Senate amendment, except the House bill refers to major goals while the Senate amendment refers to measurable outcomes.

SR with an amendment:

In paragraph (3), strike “major” and insert “measurable”, and strike all references to “goals” and insert “results or outcomes”

(302) There are no differences between the House bill and Senate amendment.

LC

(303) The Senate amendment, but not the House bill requires States to demonstrate that they have in effect the statewide system required in section 633.

The House bill specifically references effects of fetal exposure to alcohol, the Senate amendment does not.

The House bill, but not the Senate amendment, requires a description of collaboration efforts with other early childhood programs in the State.

HR with an amendment:

Strike “for evaluation” after “require the referral” and insert “under this part” after “intervention services” in (6) and insert:

“(11) a description of State efforts to promote collaboration between Early Head Start programs, early education and child care programs, and services under part C of this Act.”

Report language:

“The Conferees intend that every child described in 637(a)(6)(A) and (B) will be screened by a Part C provider or designated primary referral source to determine whether a referral for an evaluation for early intervention services under Part C is warranted. If the screening indicates the need for a referral, the Conferees expect a referral to be made. However, the Conferees do not intend this provision to require every child described in Section 637 (a)(6)(A) and (B) to receive an evaluation or early intervention services under Part C.”

(304) The House bill gives discretion of up to 6 months to develop a transition plan. The Senate amendment provides up to 9 months.

HR

(305) Senate transition plan includes reference to “as appropriate, steps to exit from the program.”

HR

The Senate amendment, but not the House bill, includes a requirement for policies and procedures regarding homeless children and wards of the State.

SR

(306) The Senate amendment, but not the House bill, requires assurances regarding homeless children and wards of the State.

HR

(307) There are no significant differences between the House bill and Senate amendment.

LC

(308) Both the House bill and the Senate amendment allow States to continue to provide services to children aged 3-5 in the Part C program, if the parent chooses to keep their child in that system. The Senate amendment requires the written consent of parents to continue to provide early intervention services.

HR with an amendment to (4) to read as follows:

“(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and”

(309) Neither the House bill nor the Senate amendment make any changes in this section to current law.

HR

(310) The House bill makes no changes to current law. The Senate amendment adds a provision requiring States to ensure that interagency agreements are in place to ensure that services are paid for by appropriate State agencies.

HR with an amendment to (b) to read as follows:

“(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.

(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.

(A) IN GENERAL - The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure –

(i) the provision of, and financial responsibility for, services provided under this part; and

(ii) such services are consistent with the requirements of section 635 and the State’s application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B – The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State’s agreement or mechanism under Section 612(a)(12), where appropriate.

(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY

(A) IN GENERAL – If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

(B) REIMBURSEMENT – Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

(3) SPECIAL RULE – The requirements of paragraph (1) may be met through –

(A) State statute or regulation;

(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State’s application pursuant to section 637.”

(311) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(312) There are no differences between the House bill and Senate amendment.

LC

(313) The House bill, but not the Senate amendment, requires the addition of representatives from the State mental health agency, child welfare agency, and the Office of the Coordinator of homeless children and youth to the State council.

The Senate amendment, but not the House bill, requires parents of homeless children and representatives of wards of the State to be on the panel.

The Senate amendment, but not the House bill, requires the addition of representatives from the State Medicaid agency to the State council, homeless children, the welfare agency, and foster children.

HR with an amendment:

Strike 1(A) and replace with 1(A) from House bill and strike 1(M) and insert 1(J) from House bill

(314) There are no differences between the House bill and Senate amendment.

LC

(315) There are no differences between the House bill and Senate amendment.

LC

(316) There are no differences between the House bill and Senate amendment.

LC

(317) There are no differences between the House bill and Senate amendment.

LC

(318) The House bill requires the BIA to submit an annual report and the Senate amendment requires a biennial report.

HR

(319) The Senate amendment includes the authorization of a new State bonus grant to States that develop birth -6 programs, otherwise the State formulas are the same.

HR with an amendment:

Amend (e) to read as follows:

“(e) RESERVATION FOR STATE INCENTIVE GRANTS.

(1) The Secretary shall reserve 15 percent of the amount appropriated under section 644 for any fiscal year that such amount exceeds \$460,000,000 to make allotments to States that are carrying out the policy described in section 635(b), by allotting to each State an amount that bears the same ratio to the amount of such reservation as the number of infants and toddlers in the State bears to the number of infants and toddlers in all participating States, without regard to subsections (c)(2) and (3).

(2) MAXIMUM.--No State may receive an allotment greater than 20 percent of the reservation pursuant to this subsection.

(3) CARRYOVER OF FUNDS BY STATES.—Notwithstanding section 421(b) of the General Education Provisions Act or any other provision of law, a State may carryover funds received from the Secretary under this for one additional fiscal year.”

(320) The House bill establishes a specific authorization level for the first year and such sums for the life of the authorization. The Senate amendment authorizes such sums for the entire authorization.

HR

Part D

(321) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(322) Except for minor wording differences, there are no differences between the House bill and Senate amendment.

HR

(323) The House bill focuses on training for existing personnel while the Senate amendment also allows for education of future personnel and defines the term personnel.

HR with an amendment:

Amend title to “State Personnel Development Grants”

(324) The Senate amendment authorizes a formula grant program if the appropriation exceeds \$100 million. The House bill keeps the program as a competitive grant.

HR with an amendment:

Insert new (4) as follows and renumber accordingly:

“(4) Direct Benefit.--In utilizing the amount provided under paragraph (1) and not reserved pursuant to subsection (e), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.”

(325) The Senate amendment, but not the House bill, requires the inclusion as a partner of a State agency for teacher preparation and certification, if it is outside of the SEA. The Senate amendment also requires the inclusion of the State agency responsible for administering Part C, child care, and VR programs.

HR with an amendment:

Strike “institutions of higher education” and insert “at least one institution of higher education” in (b)(1)

HR with an amendment:

Strike “child care” and insert “early education, child care” in (b)(1)

Report language:

“This provision requires State educational agencies to establish partnerships with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including at least one institution of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs. The Conferees encourage State educational agencies, when

establishing such partnerships and where feasible, to establish partnerships with multiple institutions of higher education.”

(326) The House bill and Senate amendment have similar, but differing descriptions of PTIs (E), the State advisory panel, and personnel.

HR

(327) Current law in Senate amendment lists other partners, the House bill lists optional partners.

HR

(328) The Senate amendment includes a requirement that the plan assess vacancies and shortages, and the existence of preservice programs.

HR with an amendment:

Insert “and inservice” after “preservice” in (a)(2)(B)(ii)

(329) The House bill specifically mentions related services personnel, while the Senate amendment does not.

HR

(330) The Senate amendment references meeting personnel requirements of Part C, while the House bill does not.

HR

(331) The Senate amendment includes a requirement that the State will carry out each of the strategies in the plan. The House bill includes this requirement in (b)(5).

HR

(332) The Senate amendment, but not the House bill, includes requirements relating to highly qualified teachers and teacher qualifications for poor and minority students.

HR with an amendment:

Amend heading to “Elements of State Personnel Development Plan”

(333) The House bill and Senate amendment have differing provisions on coordination of other public and private resources.

HR

(334) The Senate amendment, but not the House bill, requires State plans to include information on integration with other activities (4)(B), provide technical assistance (5) and (6), recruit and retain highly qualified teachers (7), teachers of poor and minority children (8), and meeting performance goals in Section 612(a)(15).

HR with an amendment:

Strike “preservice and inservice”

(335) The House bill maintains this program as a competitive grant program. The Senate amendment converts this to a formula grant program if funds exceed \$100 million.

HR

(336) There are no significant differences between the House bill and Senate amendment, except the Senate language only applies if the program is competitive.

HR

(337) The House bill, but not the Senate amendment, includes a requirement that the annual report identify necessary changes to the State plan to improve performance.

SR with an amendment to read as follows:

“(3) identify changes in such strategies, if any, to improve its performance”

(338) Similar provisions with the Senate amendment adding as an allowable activity the ability to improve personnel preparation programs, and including functional standards. The Senate amendment also includes principals as eligible personnel, while the House bill includes early intervention and related services personnel. The Senate amendment also includes training in implementing effective IEPs.

HR

(339) The House bill and Senate amendment are similar except the Senate amendment refers to ‘1 or more’ of the activities while the House bill does not.

HR

(340) There are no significant differences between the House and Senate amendments.

HR/LC

(341) The House bill requires that 90% of funds be spent on professional development, while the Senate amendment requires 75% be spent on professional development.

SR

(342) There are no differences between the House bill and Senate amendment.

LC

(343) The House bill maintains this as a competitive grant program and establishes a lower maximum grant award.

HR

(344) The House bill authorizes \$44 million for the first year while the Senate amendment authorizes “such sums.”

HR

(345) The Senate amendment, but not the House bill, includes a purpose to help SEAs and LEAs improve their educational systems.

HR with an amendment:

Add term “personnel prep” to paragraph (1) and the term “for children with disabilities” in paragraph (2)

Report language:

“The committee believes that information and assistance to States and LEAs on the effective implementation of responsiveness to intervention models must be developed and made widely available as quickly as possible. Large-scale implementation of improved methodologies for the determination of and appropriate intervention for specific learning disabilities will be crucial to making needed reforms in this area. The Secretary is strongly encouraged to collaborate with leading organizations and researchers in the field of learning disabilities to assist with development and dissemination activities, including information and assistance for educators and parents. Such an entity would have existing capacity for national dissemination activities, proven effectiveness and efficiency in developing and delivering large-scale research-based informational and assistance programs, and have well established relationships with the education and parent communities.”

(346) The Senate amendment requires the comprehensive plan be coordinated with the ESRA plan and that the Secretary solicit input from interested individuals. The House bill does not include these provisions.

The Senate amendment also allows public comment of 60 days, while the House bill requires 30 days for public comment.

HR with an amendment:

Strike “60” and insert “45” in paragraph (2)

(347) The House bill, but not the Senate amendment, allows the Secretary to determine whether to include for-profit entities in the competition.

HR

(348) The House bill requires 2% of funds to be reserved for HBCU's, while the Senate amendment requires 1% of funds to be reserved. The Senate amendment, but not the House bill, expands the pool of funds that are eligible to include subparts 3 and 4.

SR

(349) The Senate amendment, but not the House bill, adds priorities for geographic diversity universal design and assistive technology, and gifted and talented children.

SR with an amendment:

Insert the following definition at note 32:

“(34) Universal Design. - The term ‘universal design’ has the meaning given that term under paragraph (1) of section 3 of the Assistive Technology Act of 1998, (29 USC Sec. 3002).”

The Senate amendment, but not the House bill, includes homeless children and wards of the State and Impact Aid children as being included in the list of children the Department can address the needs with projects under Part D.

SR on Senate 3(L) and (8)

(350) There are no differences between the House bill and Senate amendment.

LC

(351) The Senate amendment, but not the House bill, requires the Secretary to ensure that products are available in accessible formats for people with disabilities.

SR

Report language:

“The Conferees intend that the Secretary shall ensure that recipients of grants under this part make products available in alternate formats, including electronically.”

(352) The Senate amendment, but not the House bill, expands the pool of funds considered as part of the amount for a ratable reduction, if necessary.

HR

(353) The House bill and Senate amendment contain similar provisions creating a National Center for Special Education Research at the Institute for Education Science. However, the Senate amendment contains this language in Title III.

HR

(354) The House bill and Senate amendment include similar provisions regarding authorized research activities with the House bill adding a focus on limited English proficient children with disabilities and the Senate amendment adding a focus on transition services. The Senate language is in Title III.

HR/SR to accept both new activities

(355) The House bill and Senate amendment contain similar provisions regarding a research plan, with the House bill adds implementation criteria to ensure the plan is carried out. The Senate language is in Title III.

HR

(356) The House bill and Senate amendment include similar provisions with the House bill adding as an allowable activity the ability to test and apply research findings in typical classroom settings.

SR with an amendment:

Strike “service” and insert “where children with disabilities receive services” after “settings” in (c)(1)

Report language:

“The conferees recognize that research-based structured learning systems that are capable of using fine grained diagnostics to generate prescriptions, and incorporate community members and parents as mentors are highly effective in preventing school failure for children with disabilities. These programs are particularly effective as an early intervention strategy for children with disabilities, especially in reading and mathematics. When aligned to state standards such programs create a high level of accountability for local programs serving children with disabilities.

The HOSTS Language Arts program, which is used widely in Texas, Ohio, Florida, Delaware, Michigan, Louisiana, and other states, is an example of such a program. HOSTS Learning programs have assisted schools in significantly improving student achievement and test results for all children, including children with disabilities. Research conducted by Bowling Green University has specifically demonstrated the efficacy of HOSTS Learning with children with disabilities and with children whose low achievement might otherwise cause them to be mislabeled as disabled.

It has been demonstrated that these programs reduce academic failure, promote the integration of children with disabilities into the mainstream of educational success, decrease the incidence of school dropout, substance abuse, teen pregnancy, crime, and unemployment. This is instrumental in restoring trust in America's schools. Specifically, the conferees believe these intensive, research-based learning systems, that utilize teacher oversight, diagnostic and prescriptive tools, and community engagement, dramatically increase student achievement and implement the recommendations of the National Reading

Panel for all children.”

(357) The House bill and Senate amendment contain similar provisions with the Senate amendment adding activities to ensure the training of highly qualified teachers, and training on technology and transition services.

HR with an amendment:

Move Sec. 664 to Note 353 and renumber Sections accordingly

(358) The House bill and Senate amendment include similar provisions with the Senate amendment adding activities to allow programs to support continuous personnel preparation, parental involvement, rural and high poverty schools, and highly qualified teachers.

HR with an amendment to read as follows:

“(b) PERSONNEL DEVELOPMENT; ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS. –

- (1) IN GENERAL-** In carrying out this section, the Secretary shall support activities
 - (A) for personnel development, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and**
 - (B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).**
- (2) PERSONNEL DEVELOPMENT. –** In carrying out paragraph (1)(A) the Secretary shall support not less than 1 of the following activities:
 - (A) Support effective existing, improve existing, or develop new collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including --**
 - (i) Working collaboratively in regular classroom settings.**
 - (ii) Using appropriate supports, accommodations, and curriculum modifications.**
 - (iii) Implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.**
 - (iv) Effectively working with and involving parents in the education of such parents' children.**

- (v) Utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.
 - (vi) Effectively constructing IEPs, participating in IEP meetings, and implementing IEPs.
 - (vii) Preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965.
 - (viii) Working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.
- (B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.
- (C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.
- (D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.
- (E) In the case of principals and superintendents, providing activities to promote instructional leadership and improved collaboration between general educators, special education teachers, and related services personnel.
- (F) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.
- (G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.
- (3) **ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS** – In carrying out paragraph (1)(B) the Secretary shall support not less than 1 of the following activities:
- (A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs; or

(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

(i) consist of at least—

(I) 1 or more institutions of higher education with special education personnel preparation programs;

(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students;

(III) 1 or more elementary or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities; and

(ii) may include other entities eligible for assistance under this part; and

(iii) provide—

(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.”

(359) The House bill and Senate amendment include similar provisions with the House bill adding as an allowable activity to focus on LEP students with low-incidence disabilities and the Senate amendment adding a new emphasis on communication and significant cognitive disabilities and multiple disabilities.

HR/SR to accept both

(360) The House bill, but not the Senate amendment, adds as an allowable activity services that benefit leadership personnel that serve LEP students.

SR

(361) The Senate amendment adds a new program to provide funds to colleges and universities to support and train special education teachers.

SR

(362) The Senate amendment adds a new program to provide funds to colleges and universities to support and train general education teachers to work with students with disabilities.

SR

(363) The House bill, but not the Senate amendment, adds a required assurance that the State needs personnel in the area of support.

SR with an amendment:

Strike (3)(B)

(364) The Senate amendment but not House bill allows the Secretary to give preferences to underrepresented groups.

HR

(365) The House bill requires a service obligation of 2 years for every year of assistance provided while the Senate amendment requires 1 year of service for one year of support. The House bill also contains a provision on leadership preparation. The Senate amendment, but not the House bill, allows scholarships for its new general educator program.

HR with an amendment to read as follows:

“(i) Service Obligation.—

(I) In general.—Each application for funds under subsections (b), (c), and (d) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

(II) Special Rule.—Notwithstanding paragraph (1) of this subsection, the Secretary may reduce or waive the service obligation requirement if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

(III) Oversight.—The Secretary shall be responsible for ensuring that individuals participating in these programs fulfill their service obligations.”

(366) The Senate amendment includes a separate authorization for this section, while the House bill contains an authorization for the entire subpart.

HR

(367) The House bill and Senate amendment include similar provisions, except the Senate’s list of authorized activities falls in subsection (e).

HR

(368) The House bill and Senate amendment contain similar provisions, with the House bill requiring a comprehensive plan to be published for public comment and the Senate amendment requiring consultation with specified groups.

The House bill requires an interim report be published in 2 and ½ years while the Senate amendment requires the interim report in 3 years.

SR with an amendment:

Amend heading of (b) to “Assessment of National Activities”

HR on 3 years for interim report

(369) The Senate amendment, but not the House bill, requires a study on alternate assessments and alternative achievement standards.

HR

(370) There are no differences between the House bill and Senate amendment.

LC

(371) The House bill and Senate amendment include similar provisions, except the House's list of authorized activities is in (b).

The Senate amendment, but not the House bill, requires a study on the 0-6 program in Part C.

HR

(372) The Senate amendment allows the Secretary to reserve funds under Parts B and C to pay for the studies and evaluations, while the House bill requires studies and evaluations to be paid out of the authorizations of appropriations for this subpart.

SR

(373) The House bill includes one authorization of appropriations for this subpart, while the Senate amendment included authorizations for each section.

HR

(374) There are no significant differences between the House and Senate amendments.

HR with an amendment:

Insert a new paragraph (1) to read as follows and renumber accordingly:

“(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;”

(375) The House bill and Senate amendment contain similar provisions with the House bill adding as a required activity to meet the needs of low-income and limited English proficient students and the Senate amendment adding requirements for the center to explain mediation requirements to parents, assist parents and children of their rights upon reaching their majority, partner with community parent resource centers, and report on the number of parents served through alternative dispute resolution.

HR with an amendment:

Insert as a new paragraph (3) to read as follows and renumber accordingly:

“(3) ensure that the training and information provided meets the needs of low-income parents and parents of children with limited English proficiency;”

HR with an amendment:

Strike “research based practices and interventions” and insert “practices and interventions based on scientifically based research, to the extent practicable,” in (3)(D)

HR with an amendment:

Insert as a new (F) to read as follows and reorder accordingly:

“(F) participate in activities at the school level that benefit their children;”

HR with an amendment:

Insert in paragraph (10) [not renumbered]:

“and the Institute of Education Sciences” after “section 663”

HR with an amendment:

Add “as appropriate under state law” after “majority” in paragraph (6)

HR with an amendment:

Insert at the end of paragraph (7) [not renumbered]:

“, including the resolution session described in section 615(e);”

(376) The House bill allows as an optional activity information to assist parents and children of their rights upon reaching their majority.

HR

(377) The Senate amendment, but not the House bill, requires coordination of grantees in a large State.

HR with an amendment:

Insert “, including those that work with low-income parents and parents of children with limited English proficiency” at the end of (d)(2)

(378) The House bill, but not the Senate amendment, requires the advising board to advise the governing board of the organization.

HR

(379) The House bill, but not the Senate amendment, requires that the board ensure that members include low-income parents and parents of limited English proficient students.

The Senate amendment, but not the House bill, eliminates special governing committees. The House bill, but not the Senate amendment, requires the development of a memorandum explaining the role of the board and the center while the Senate amendment requires the center to develop a specific mission.

HR with an amendment:

Insert “, including low-income parents and parents of children with limited English proficiency” at the end of (g)(1)(C)

(380) The Senate amendment, but not the House bill, includes functional goals, and requires that a majority of members are parents of children with disabilities age birth through 26

HR

(381) The Senate amendment limits the national technical assistance grantee to one parent organization while the House bill allows multiple grants and a variety of eligible agencies.

SR

(382) The Senate amendment, but not the House bill, includes extra requirements for a national and regional network of parent training and information technical assistance centers.

SR with amendment:

Add Senate (d) to House bill

(383) The House bill, but not the Senate amendment, adds the support of implementation of research and the uses of technology and the Senate amendment, but not the House bill, adds support of internet based communications for students with cognitive disabilities.

HR with an amendment as follows:

Strike “and” and insert “, (c) and (d)” after “subsections (b)” in subsection (a)

(384) The House bill allows the Secretary to support these activities and the Senate amendment requires the Secretary to support these activities. The Senate amendment also limits the captioning of programs only if captioning has not previously been provided or paid for.

HR with an amendment as follows:

Insert “; AND INSTRUCTIONAL MATERIALS” after “ACTIVITIES” in the heading of subsection (c)

HR with an amendment as follows:

Strike (1)(D)

HR with an amendment as follows:

Insert subsection (e) to read as follows:

“(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

(1) IN GENERAL.—Notwithstanding subsection (d), in carrying out this section, the Secretary shall support, through the American Printing House for the Blind, a center known as the Instructional Materials Access Center not later than one year after the date of enactment.

(2) RESPONSIBILITIES—The duties of the National Instructional Materials Access Center are the following:

(A) To receive and maintain a catalog of print instructional materials prepared in the national instructional materials accessibility standard, as established by the Secretary, made available to the center by the textbook publishing industry, State educational agencies, and local educational agencies;

(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to visually impaired and print disabled students in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe; and

(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under 612(a)(22) and section 613(a)(6).

(3) DEFINITIONS.—In this section—

(A) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term ‘National Instructional Materials Accessibility Standard’ means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

(B) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term ‘blind or other persons with print disabilities’ means children served under this Act and who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind,” approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

(C) SPECIALIZED FORMATS.—The term ‘specialized formats’ has the meaning given the term in section 121 (c) (3) of title 17, United States Code.

(D) PRINT INSTRUCTIONAL MATERIALS.—The term ‘print instructional materials’ means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

(4) APPLICABILITY.—This section shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard is published in the Federal Register.

(5) LIABILITY OF THE SECRETARY.—Nothing in this subsection shall be construed to establish a private right of action against the Secretary of Education for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the functions of such Center, or to otherwise authorize a private right of action related to the performance by the

Center, including through the application of the rights of children and parents established under this Act.”

HR with an amendment as follows:

Insert “not” before “been fully funded by other sources” in paragraph (2)

(385) The House bill, but not the Senate amendment, contains more specific requirements for eligible entities of the distributors of textbooks.

HR with an amendment as follows:

Redesignate subsection (e) as subsection (f)

(386) The House bill lays out set figures for authorizations for the subpart and for each section, while the Senate authorizes such sums for the section.

HR

(387) The Senate amendment requires the Secretary to establish an electronic standard for the preparation of electronic files for instructional materials and creates a national center to disseminate instructional materials to some students with disabilities. The House bill does not include this provision.

SR with an amendment:

Add at the end of this Act the following technical amendments in the miscellaneous provisions section to amend 17 U.S.C. §121 as follows:

Redesignate subsection (c) to (d)

Insert new paragraph (c) to read as follows:

“(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary and secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(22)(B), 613(a)(6), and section 674(d) of the Individuals with Disabilities Education Reform Act of 2004, containing the contents of print instructional materials using the Instructional Material Accessibility Standard (as defined in section 674(d) of said Act, when required to do so by any State or local educational agency, if the publisher had the right to publish such print instructional materials in print formats and if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.

SR with amendment as follows:

Amend the definition of “specialized formats” in subsection (d) (currently subsection (c)) and add the definition from “print instructional materials” as follows:

- **“Specialized formats” means braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities. With respect to instructional materials, “specialized formats” also means large print formats when they are distributed exclusively for use by blind or other persons with disabilities.**
- **“PRINT INSTRUCTIONAL MATERIALS.— The term “print instructional materials” has the meaning given to it under section 674(d)(3)(D) of the Individuals with Disabilities Education Reform Act of 2004.**

(388) The Senate amendment creates a new \$50 million competitive program to make grants to LEAs to establish alternative educational settings and provide behavioral supports to students with disabilities. The House bill does not include this program.

HR with amendment:

Insert the following at the end of Subpart 2:

“SEC. 674. Interim Alternative Educational Settings, Behavioral Supports, and Systemic School Interventions

(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements to support safe learning environments that support academic achievement for all students by improving the quality of interim alternative educational settings, and providing increased behavioral supports and research-based, systemic interventions in schools.

(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support activities to

- (1) establish, expand or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—**
 - (A) training for school staff on early identification, prereferral, and referral procedures;**
 - (B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;**
 - (C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;**
 - (D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;**
 - (E) stronger linkages between school based services and community-based resources, such as community mental health and primary care providers; or**
 - (F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or**
- (2) to improve interim alternative educational settings by--**
 - (A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;**
 - (B) attracting and retaining a high quality, diverse staff;**
 - (C) providing for referral to counseling services;**

- (D) utilizing research-based interventions, curriculum, and practices;
 - (E) allowing students to use instructional technology that provides individualized instruction;
 - (F) ensuring that the services are fully consistent with the goals of the individual student's IEP;
 - (G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;
 - (H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or
 - (I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.
- (c) **DEFINITION OF ELIGIBLE ENTITY.** In this section, the term 'eligible entity' means-
- (1) a local educational agency; or
 - (2) a consortium consisting of a local educational agency and 1 or more of the following entities:
 - (A) another local educational agency;
 - (B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;
 - (C) an institution of higher education;
 - (D) a community mental health provider; or
 - (E) an educational service agency.
- (d) **APPLICATIONS.** Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall
- (1) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require; and
 - (2) involve parents of participating students in the design and implementation of the activities funded under this section.
- (e) **REPORT AND EVALUATION** – Each eligible entity receiving a grant under this Act shall prepare and submit annually to the Secretary of Education a report on the outcomes of the activities assisted under the grant.”

Report language:

“The Conferees intend for this program to have a systemic impact on a school environment rather than provide isolated assistance to children with disabilities. The Conferees believe a systemic, research-based approach can greatly benefit special needs children while also providing an incidental benefit to non-disabled children, school staff, parents and others in the school community.

“The Conferees instruct the Department of Education to establish an easily accessible website with information on best practices for interim alternative educational settings, behavior supports, and systemic school interventions to help children with behavioral and emotional disabilities.”

Title II

(389) The Senate amendment includes a new \$50 million reservation of Rehabilitation Act State grants for States to provide transition services to students with disabilities through the VR system (beginning in the first year the amount appropriated exceeds the FY04 amount by \$100,000,000). The House bill does not include this provision.

SR

Title V (House bill)

(390) The House bill includes a sense of Congress that safe and drug free schools are essential for the learning and development of children with disabilities. The Senate amendment does not include this provision.

HR

(391) The House bill requires a study on the costs to States of complying with IDEA. The Senate amendment does not include this provision.

HR

Title III

(392) The House bill and Senate amendment contain similar provisions creating a National Center for Special Education Research at the Institute for Education Science. However, the House bill contains this language in Section 663.

HR

(393) The Senate amendment, but not the House bill, contains a separate provision on the mission of the NCSER. The House bill and Senate amendment have differing language on the grant application process.

HR

(394) The House bill lists similar authorized activities as the Senate amendment, which contains those activities under the “duties” section.

HR

(395) The Senate amendment, but not the House bill, contains a “standards” section.

HR

(396) The Senate amendment contains more detailed plan provisions than the House bill, and contains an implementation provision while the House does not.

HR

Title IV

(397) The Senate amendment creates a commission on universal design and requires reports to be submitted to Congress on universal design and accessibility of instructional materials. The House bill does not include this provision.

SR

Title V

(399) The Senate amendment, but not the House bill, includes an amendment to the Children's Health Act to include the Secretary of Education as a required partner in the longitudinal study and requires that the study be in compliance with FERPA requirements.

HR

(398) The Senate amendment, but not the House bill, includes this required study on medication.

SR

General

(400) Add enactment clause

LC